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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO**

**STEPHEN M. DONECKER and  
KRISTA L. DONECKER,**

Plaintiffs

vs.

**CARL A. WESCOTT; SUNEET  
SINGAL; SURPRISE  
DEVELOPMENT, INC., a California  
Corporation; STRATEGIC  
DEVELOPMENT HOLDING  
COMPANY, LLC, a California Limited  
Liability Corporation, and Does 1-  
100, inclusive.**

Defendants

**Case No. \_\_\_\_\_**

**VERIFIED COMPLAINT FOR DAMAGES  
UNLIMITED**

**JURY TRIAL DEMANDED**

Accounting for Gains  
Aiding and Abetting Fiduciary Abuse-Wescott  
Aiding and Abetting Fiduciary Abuse-Singal  
Aiding and Abetting Fraud-Wescott  
Aiding and Abetting Fraud-Singal  
Breach of Fiduciary Duty  
Breach of Implied Covenant of Good Faith and Fair Dealing  
Breach of Written Contract (Promissory Note)  
Civil Conspiracy  
Common Count for Money Lent  
Conversion  
Deceit-Concealment and Suppression of Fact  
Fiduciary Abuse  
Fraud  
General Damages  
Imposition of Constructive Trust  
Inducement and Declaratory Relief  
Injunction Freezing Assets  
Intentional Infliction of Emotional Distress  
Negligence  
Negligent Misrepresentation  
Negligent Infliction of Emotional Distress  
Punitive Damages  
Unfair Business Practices  
Unjust Enrichment  
Violation of B&P Code § 17200  
Violation of B&P Code § 17200 (Aiding and Abetting)  
Violation of Corporations Code § 25401  
Violation of 18 U.S.C. § 1961 (Racketeering Influenced and  
Corrupt Organization [RICO])

**COMPLAINT FOR DAMAGES**

1 **I. PARTIES AND BACKGROUND INFORMATION.**

2 Plaintiffs STEPHEN M. DONECKER and KRISTA L. DONECKER allege as follows:

3 **A. RESIDENCY and JURISDICTION**

4 1. Plaintiffs **STEPHEN M. DONECKER and KRISTA L. DONECKER** are,  
5 and at all times herein mentioned were married to one another and  
6 residents of Yolo County, California.

7 a. Hereafter, when referred to **collectively**, Plaintiffs STEPHEN M.  
8 DONECKER and KRISTA L. DONECKER will be called "Plaintiffs"  
9 or the "DONECKERS."

10 2. Plaintiffs are informed and believe that Defendant **CARL A. WESCOTT**,  
11 also known as **CARL ALEXANDER WESCOTT**, is, and at all times  
12 herein mentioned was, a resident of the County of San Francisco,  
13 California.

14 a. Hereafter, CARL A. WESCOTT will be called Defendant  
15 WESCOTT.

16 3. Plaintiffs are informed and believe that Defendant **SUNEET SINGAL** is,  
17 and at all times herein mentioned was, a resident of the County of  
18 Sacramento, State of California.

19 a. Hereafter, SUNEET SINGAL will be called Defendant SINGAL.

20 4. Defendant **SURPRISE DEVELOPMENT, INC.**, a California Corporation.  
21 ("SURPRISE INC"), was and is a Corporation formed, organized and  
22 existing under the laws of the State of California, doing business in the  
23 State of California. Its principal officer and Agent for Service of Process  
24 is Defendant WESCOTT.

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**COMPLAINT FOR DAMAGES**

1                   5.     Defendant **STRATEGIC DEVELOPMENT HOLDING COMPANY, LLC.**, a  
2                   California Limited Liability Corporation ("STRATEGIC LLC") is a  
3                   Corporation formed and organized under the laws of the State of  
4                   California from the period of January 17, 2007, until a date uncertain,  
5                   when it was suspended by the California Secretary of State. Its principal  
6                   officer and Agent for Service of Process is Defendant SINGAL.

7                   **B. DOE DEFENDANTS**

- 8                   1.     The true identities and capacities of Defendants DOES 1 through 100,  
9                   inclusive, are unknown to Plaintiffs at this time. Plaintiffs will amend this  
10                  Complaint to set forth the full amount when the same has been  
11                  ascertained.
- 12                 2.     Plaintiffs are informed and believe that each of the fictitiously named  
13                  Defendants is responsible in some manner for the events hereafter  
14                  alleged, or is in some manner legally responsible for Plaintiffs' damages  
15                  complained of hereafter.
- 16                 3.     Defendants DOES 1 through 100 are the employees, agents,  
17                  independent contractors, or other persons who acted on behalf of the  
18                  Defendants in this action.
- 19                 4.     Plaintiffs are informed and believe and thereon allege that at all times  
20                  mentioned herein, each DOE Defendant was an agent of each of the  
21                  other Defendants, acted jointly with the other Defendants, assisted or  
22                  acted in concert with the other Defendants, and otherwise participated in,  
23                  or directed, or otherwise was responsible for, directly or indirectly, the  
24                  occurrences alleged herein.

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**COMPLAINT FOR DAMAGES**

1 C. VENUE

- 2 1. Sacramento County is a proper venue for this matter because during all  
3 times pertinent to this action, Defendants conducted business in  
4 Sacramento County which included communications via telephone, cell  
5 phone, fax and email and "face-to-face" meetings in Sacramento County,  
6 among other counties, all concerning properties located in, but not limited  
7 to Merced, Placer, San Francisco, and Yolo.
- 8 2. A significant portion of those communications and transactions involved  
9 and/or included Defendant SINGAL, a resident of and doing business in  
10 Sacramento County as a result of which communications and  
11 transactions, agreements were reached, as set forth in detail hereafter.

12 **II. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

13 A. At all times mentioned herein Plaintiff KRISTA L. DONECKER was a California  
14 licensed real estate agent and thereafter broker and principal of DONECKER Consulting, Inc.

15 B. KRISTA L. DONECKER was a California licensed real estate agent from August  
16 21, 1996 to March 13, 2008, and has been a licensed real estate broker since March 14, 2008.

17 C. In her capacity as a real estate agent licensee, and "Wholesale Account  
18 Representative", Plaintiff KRISTA L. DONECKER had earned in excess of ONE MILLION  
19 DOLLARS in an annual period prior to the events set forth in this complaint.

20 D. Plaintiff KRISTA L. DONECKER is a June 1993 graduate of California State  
21 University, Fresno, where she earned a Bachelor of Science in Administration / Marketing.

22 E. At all times mentioned herein, Plaintiff STEPHEN M. DONECKER, a 1996  
23 graduate of California State University, Fresno, with a Bachelor of Science Degree in Electrical  
24 Engineering with minors in Computer Science and Mathematics, was and is employed by the  
25 University of California at Davis at the Advanced Highway Maintenance and Construction  
26 Technology Research Center, as an Assistant / Associate Development Engineer.

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**COMPLAINT FOR DAMAGES**

1 F. Prior to the events set forth in this complaint, Plaintiff STEPHEN M.  
2 DONECKER, as a private investor of the Donecker family's funds in the stock market, had  
3 realized net stock trading gains in excess of ONE MILLION DOLLARS (\$1,000,000.00) in the  
4 DONECKERS' trading account. When STEPHEN M. DONECKER, by virtue of his trading  
5 experience, realized the stock market was on the verge of a massive move down ("tanking") in  
6 2008, he withdrew his family's stock trading gains from the trading account and exited the  
7 market before it dropped. The funds he withdrew were deposited with various banks to protect  
8 those funds in the event any one of them failed.

9 G. In calendar year 2005, while employed as a "Wholesale Account Representative"  
10 for Argent Mortgage, Plaintiff KRISTA L. DONECKER became acquainted with Defendant  
11 SINGAL, also a California licensed real estate broker, who was employed as a Project Manager  
12 for Surprise Development, an entity owned and managed by Defendant WESCOTT.

13 H. During the period of time prior to the events alleged in this complaint, Plaintiff  
14 KRISTA L. DONECKER was not aware of any inappropriate or unprofessional conduct relating  
15 to Defendant SINGAL's activities as a broker or as a principal or employee of Surprise  
16 Development and Defendant WESCOTT, and for that reason, had faith, trust, and confidence in  
17 his advice and opinions as set forth below.

18 I. During the approximate two (2) month period prior to the offer of a promissory  
19 note by WESCOTT to the DONECKERS, as set forth in detail hereafter, Plaintiff KRISTA L.  
20 DONECKER, at the suggestion and request of SINGAL, attempted to find lenders to  
21 WESCOTT, for real estate projects he and SINGAL wanted to develop. SINGAL informed  
22 Plaintiff KRISTA L. DONECKER that he and WESCOTT were partners. As part of her joint  
23 efforts on behalf of SINGAL and WESCOTT she received from Defendant WESCOTT an email  
24 dated June 16, 2008 in which he forwarded to her a "Balance Sheet in GAAP Format", dated  
25 May 14, 2008, which stated WESCOTT had current assets of \$1,956,608.00, total assets of  
26 \$51,419,757.00, current liabilities of \$1,007,692.00, total liabilities of \$11,096,158.00, and a net  
27 worth of \$40,323.599. A copy of that Balance Sheet is attached hereto as **EXHIBIT 1**.

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**COMPLAINT FOR DAMAGES**

1 J. Despite her best efforts, Plaintiff KRISTA L. DONECKER was unable to locate  
2 any lenders for WESCOTT or SINGAL.

3 K. In late June 2008, Plaintiff KRISTA L. DONECKER, while traveling with her  
4 husband in their car en route to San Francisco, received a cell phone call from Defendant  
5 SINGAL. During that call, SINGAL asked her if she would be interested in lending money to  
6 Defendant WESCOTT, who, SINGAL informed her, paid a high rate of interest on borrowed  
7 funds. No such request or offer had been made previously by SINGAL to Plaintiffs.

8 L. Because of her professional acquaintance with Defendant SINGAL, and the  
9 financial statement provided to her by WESCOTT, as described in Paragraph I, above, she  
10 trusted that the information provided by SINGAL concerning WESCOTT was reliable, and,  
11 based thereon, she could rely that Defendant WESCOTT was an individual of significant net  
12 worth, who was both a competent and ethical real estate broker and developer.

13 M. Shortly after the June 2008 telephone call from Defendant SINGAL, Plaintiff  
14 KRISTA L. DONECKER spoke by telephone with Defendant WESCOTT, who offered her a  
15 fifteen percent (15%) interest rate on a three (3) month loan to him in the sum of \$250,000.00,  
16 which loan would be evidenced by a Promissory Note secured by a recorded Deed of Trust.

17 N. On July 1, 2008, in response to that telephone call, Plaintiff KRISTA L.  
18 DONECKER met with Defendant WESCOTT at his office in San Francisco, California, where  
19 she agreed, on behalf of the DONECKERS, to make the loan he requested.

20 O. Defendant WESCOTT recommended that the \$250,000.00 Promissory Note be  
21 secured by a Deed of Trust on real property he owned in Sonoma County, which was improved  
22 by a single family home. WESCOTT provided the DONECKERS with a "lending application"  
23 he had previously made which showed the Sonoma property had a value of \$2,500,000.00. He  
24 informed the DONECKERS the property had an encumbrance of \$1,844,335.00, with the clear  
25 intent and purpose to induce them to believe the underlying encumbrance was current and that  
26 there was available unencumbered equity of at least \$500,000.00 to secure the \$250,000.00  
27 NOTE evidencing the loan. Only later, in 2010, as set forth below, did the DONECKERS learn  
28 the encumbrance on the Sonoma property consisted of various loans, many of which were

**COMPLAINT FOR DAMAGES**

1 “troubled” and some of which were later foreclosed.

2 Defendant WESCOTT’s failure to fully disclose the status of the encumbrance was  
3 intended to lead the DONECKERS to believe their loan would be fully secured by the deed of  
4 trust offered to them as security. In response to the representations of Defendants WESCOTT  
5 and SINGAL, the DONECKERS made the requested loan to WESCOTT, by taking the steps  
6 set forth below.

7 **P. THE INITIAL SHORT TERM LOAN AND PROMISSORY NOTE**

8 1. At the San Francisco meeting, Defendant WESCOTT gave Plaintiff  
9 KRISTA L. DONECKER a document entitled “Secured Promissory Note Payable in One  
10 Installment - SECURED TERM NOTE” in the face amount of \$250,000.00, at 15% interest,  
11 which he had signed and dated in hand “07/01/2008.” The NOTE, by its terms, required  
12 repayment of the loan in full by October 1, 2008 – a period of three (3) months – and stated it  
13 was secured by real property located at 4175 West Dry Creek Road, Healdsburg, California  
14 95448.

15 2. Regarding what appears to be a usurious interest rate of 15% offered by  
16 Defendant WESCOTT, as set forth in the Promissory Note, the California Constitution, at  
17 Section, at Article 15, Section 1 (2), provides that such rate is not usurious if the loan is “made  
18 or arranged by any person licensed as a real estate broker by the State of California and  
19 secured in whole or in part by liens on real property.”

20 3. The provisions of the California Constitution, as noted above, enabled  
21 Defendant WESCOTT and Plaintiff KRISTA L. DONECKER to arrange for an interest rate of  
22 15% because Plaintiff KRISTA L. DONECKER was licensed by the State of California’s  
23 Department of Real Estate (“DRE”) as California Real Estate Broker #01212658, effective on  
24 March 14, 2008. Defendant WESCOTT was the designated officer of two (2) entities licensed  
25 by DRE – PeopleBridge, Inc. #01454017, licensed on October 7, 2004, which license is current  
26 through October 6, 2012 – and Miracle Solutions #01523749, licensed on April 11, 2006, and  
27 expired as of April 10, 2010. Defendant WESCOTT is also the Registered Agent for Service of  
28 Process of PeopleBridge, Inc.

**COMPLAINT FOR DAMAGES**



1                   4.       On July 2, 2008, the day immediately following the San Francisco face-  
2 to-face meeting with Defendant WESCOTT, the DONECKERS authorized, initiated, and  
3 completed a wire transfer to Defendant WESCOTT's personal Wells Fargo account in the  
4 amount of \$250,000.00, from funds drawn on the DONECKERS' Charles Schwab account.

5                   5.       A copy of the July 1, 2008 Promissory Note, hereafter called "the NOTE",  
6 is attached hereto as **EXHIBIT 2**.

7                   6.       A redacted copy of the Schwab Wire Transfer Confirmation is attached  
8 hereto as **EXHIBIT 3**.

9                   7.       Although the NOTE was for a period of three (3) months only, Defendant  
10 WESCOTT told Plaintiff KRISTA L. DONECKER that he would continue to "roll the note over" at  
11 the promised fifteen percent interest (15%) until the DONECKERS were ready to call the  
12 NOTE due.

13                  8.       The NOTE required security by its terms, and Defendant WESCOTT  
14 made oral assurances that it would be secured by a recorded deed of trust. For that reason, on  
15 the same date the NOTE was made, July 1, 2008, Plaintiff KRISTA DONECKER sent two email  
16 requests to Defendant CARL WESCOTT. The first instructed him to "tie the note to the  
17 Healdsburg property" (Sonoma). The second requested he provide her with a copy of the  
18 "paperwork" (Deed of Trust) for her review, and "once reviewed, [she] would be leaving for [his]  
19 office." A copy of those two (2) emails are attached as **EXHIBIT 4**.

20                  9.       Thereafter, on July 15, 2008, the DONECKERS received an email from  
21 Defendant WESCOTT which stated that Sonoma County [the Recorder] "*didn't like the notary*  
22 *acknowledgment so they bounced back the Deed recording.*" Defendant WESCOTT also  
23 said he was in Europe through the end of [that] month and would have the Deed of Trust  
24 notarized again and sent back to the Sonoma County Recorder on August 1, 2008 -- his "*first*  
25 *day back*" ("Email Thread" attached hereafter as **EXHIBIT 5**).

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**COMPLAINT FOR DAMAGES**



1 On July 20, 2008, Plaintiff KRISTA DONECKER replied via email and instructed  
2 WESCOTT to "confirm when you get it notarized." That same date, WESCOTT replied and  
3 stated he would "...make sure the notary uses the 2008 form this time – apparently the one on  
4 the form I had ... was only valid through 12/31/2007 ..." ("Email Thread" attached hereafter as  
5 **EXHIBIT 5**).

6 On August 5, 2008, Plaintiff KRISTA DONECKER sent another email to  
7 WESCOTT asking him if the deed had been recorded ("Email Thread" attached hereafter as  
8 **EXHIBIT 5**).

9 On August 6, 2008, Plaintiff KRISTA DONECKER sent another email to  
10 Defendant SUNEET SINGAL, indicating she'd had no response from WESCOTT, and had left  
11 WESCOTT a message "just now" ("Email Thread" attached hereafter as **EXHIBIT 5**).

12 On August 6, 2008, Defendant WESCOTT replied via email to DONECKER,  
13 concerning recording of the Deed. His email states "*Not yet – been swamped since I got*  
14 *back. I will get the Deed re-notarized tomorrow and will send it off then. Sorry about the delay*"  
15 ("Email Thread" attached hereafter as **EXHIBIT 5**).

16 On August 7, 2008, Defendant WESCOTT sent another email to DONECKER,  
17 concerning the Deed, which states "*Got it re-notarized. ... Scanning now. We can send in*  
18 *tomorrow.*" A scanned copy of the signed and notarized Deed of Trust was attached to the  
19 August 7, 2008 email ("Email Thread" attached hereafter as **EXHIBIT 5** and Deed of Trust as  
20 **EXHIBIT 5.1**).

21 A copy of the "Email Thread" (a series of emails printed as a group) for the  
22 period July 15, 2008 through August 7, 2008 between DONECKER, WESCOTT and SINGAL is  
23 attached as **EXHIBIT 5 and the Deed of Trust (which was an attachment to the email) as**  
24 **5.1.**

25 10. The DONECKERS, in reliance on the truthfulness and integrity of  
26 Defendant WESCOTT, did not pursue further or confirm the status of the promised deed of  
27 trust. In fact, the DONECKERS, heard nothing further from Defendant WESCOTT, regarding  
28 the deed of trust. Two years later, in early July 2010, the DONECKERS discovered that the

1 Healdsburg property, which was to have served as security for the NOTE, had been foreclosed  
2 by the holder of an earlier recorded lien against that same property.

3 11. In addition to discovery of the foreclosure on the Healdsburg property, the  
4 DONECKERS also discovered that the deed of trust securing their NOTE had never been  
5 recorded, as a result they did not appear as creditors or lienholders at the time of the  
6 foreclosure in early 2010 and for that reason did not receive notices of default of notes senior to  
7 the NOTE.

8 12. Pursuant to the NOTE, the Principal Amount of \$250,000.00 bears  
9 interest at the rate of 15% percent, payment of which was due in full on October 1, 2008.  
10 Interest on the NOTE accrues at that rate from the date of the note, July 1, 2008, until paid.

11 13. Despite repeated requests that Defendant WESCOTT pay the  
12 DONECKERS the principal and interest due on the NOTE, pursuant to its terms, and the  
13 personal guarantee set forth in the NOTE which states “**Debtor also personally guarantees**  
14 **full repayment and also all the terms above**”, Defendant WESCOTT has failed and refused  
15 to pay the NOTE, which, with accrued interest, remains unpaid.

16 Q. **INVESTMENTS / LOANS FOLLOWING \$250,000 PROMISSORY NOTE**

17 Following the wire transfer of \$250,000 to Defendant WESCOTT for the “secured”  
18 NOTE, as described above, and approximately 18 months **BEFORE** the DONECKERS  
19 learned Defendant WESCOTT had not taken the steps necessary to secure the NOTE by  
20 recordation of a Deed of Trust, as he assured the DONECKERS he would do, as set forth  
21 above and in the First Cause of Action, below, Defendant SINGAL informed the DONECKERS  
22 that WESCOTT was developing various commercial and residential real estate projects in the  
23 United States and Panama, for which Defendant WESCOTT was seeking financing, all of which  
24 Defendant SINGAL told the DONECKERS would be “good investments” for them.

25 In response to overtures by both WESCOTT and SINGAL, the DONECKERS were  
26 induced “to invest” in various “projects” (five [5] – in the total amount of \$600,000.00) and  
27 made additional loans of in the total amount of \$862,916.67, as set forth in **DETAIL CHARTS A**  
28 **through E**, below. At no time prior to their “investments” or their additional loans after the initial

1 \$250,000 loan, did WESCOTT or SINGAL inform the DONECKERS that their \$250,000.00 loan  
2 to WESCOTT was unsecured and the Sonoma County property in danger of foreclosure.

3 As set forth, above, the DONECKERS did not learn of the foreclosure on the Sonoma  
4 property which was to have served as security for the \$250,000 promissory note from  
5 Defendant WESCOTT to them, until July 2010, after they had invested \$600,000 in projects  
6 and made loans of \$862,916.67. Had they been informed the promised Deed of Trust on the  
7 Sonoma property would not be and was not recorded, or that the "senior" debt on that property  
8 was susceptible to foreclosure due to late or nonpayment by WESCOTT, they would not have  
9 made the "investments" they did, nor would they have loaned additional funds, as set forth  
10 below.

11 The five (5) "investments" the DONECKERS were induced to make are:

- 12 1. **LINCOLN OAKS ESTATES, AKA LINCOLN WILDHORSE**  
13 **\$50,000.00**  
**August 15, 2008**

14 On August 15, 2008, the DONECKERS, at and in response to Defendants WESCOTT's  
15 and SINGAL's requests, and in reliance on a written "Term Sheet" prepared by Defendants,  
16 wired to Defendant WESCOTT's personal account the sum of FIFTY THOUSAND DOLLARS  
17 (\$50,000), as an investment in a project called "Lincoln Oaks Estates" (aka Lincoln Wildhorse)  
18 in Placer County, California. The terms of the Lincoln investment entitled the DONECKERS to  
19 a five percent (5%) ownership interest in the project. In addition to the DONECKERS' roles as  
20 investors in that project, Defendant WESCOTT and Defendant SINGAL agreed that Defendant  
21 SINGAL and Plaintiff KRISTA L. DONECKER would act as Project Managers. The wire  
22 transfer dated August 15, 2008 was from the DONECKERS' Charles Schwab account to  
23 Defendant WESCOTT's personal account. A copy of a "Term Sheet" for "Lincoln Oaks  
24 Estates, LLC" is attached hereto as **EXHIBIT 6**. A redacted copy of the Schwab Wire Transfer  
25 Confirmation is attached hereto as **EXHIBIT 6.1**. This project is also referred to in a document  
26 entitled Term Sheet, dated December 31, 2008, hereafter more fully described and attached as  
27 **Exhibit 9**.

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1 In addition to the \$50,000.00 investment, the DONECKERS expended significant  
2 additional funds in order to maintain and preserve the property, subject to proof at trial.

3 **2. LIVINGSTON RETAIL PAD**  
4 **\$50,000.00**  
5 **August 22, 2008**

6 On August 22, 2008, at and in response to Defendants WESCOTT's and SINGAL's  
7 requests, and in reliance on a written "Term Sheet" prepared by Defendants, the DONECKERS  
8 wired to Defendant WESCOTT'S personal account an additional FIFTY THOUSAND DOLLARS  
9 (\$50,000) , as an investment in a Retail Pad project in Livingston, Merced County, California.  
10 The terms of the Livingston Retail investment entitled the DONECKERS to a five percent (5%)  
11 ownership interest in the project. The wire transfer dated August 22, 2008 was from the  
12 DONECKERS' Charles Schwab account to Defendant WESCOTT's personal account.

13 A copy of a "Term Sheet" for "Livingston Retail" is attached hereto as **EXHIBIT 7** and a  
14 copy of the Schwab Wire Transfer Confirmation is attached hereto as **EXHIBIT 7.1**. This  
15 project is also referred to in a document entitled Term Sheet, dated December 31, 2008,  
16 hereafter more fully described and attached as **Exhibit 9**.

17 **3. BOCA DEL DRAGO PANAMA**  
18 **\$100,000.00**  
19 **September 29, 2008**

20 On September 29, 2008, the DONECKERS, at and in response to Defendants  
21 WESCOTT's and SINGAL's requests, wired to Defendant WESCOTT's personal account ONE  
22 HUNDRED THOUSAND DOLLARS (\$100,000) , as an investment in the Boca Del Drago  
23 project in Boca Del Toro, Panama. The terms of the Panama investment entitled the  
24 DONECKERS to a ten percent (10%) ownership interest in the project. The wire transfer  
25 dated September 29, 2008 was from the DONECKERS' Charles Schwab account to Defendant  
26 WESCOTT's personal account. A copy of a Term Sheet Agreement which includes this  
27 project, among two (2) others, and transmitted to the DONECKERS on September 29, 2008 is  
28 attached as **EXHIBIT 8**. A redacted copy of the Schwab Wire Transfer Confirmation is attached  
hereto as **EXHIBIT 8.1**. This project is also referred to in a document entitled Term Sheet,  
dated December 31, 2008, hereafter more fully described and attached as **Exhibit 9**.

1           **4.       AUBURN MULTI FAMILY APARTMENTS**  
2                   **\$200,000.00**  
3                   **September 30, 2008**

4           On September 30, 2008, the DONECKERS, at and in response to Defendants  
5           WESCOTT's and SINGAL's requests, and in reliance on a written "Term Sheet" prepared by  
6           Defendants, wired to Defendant WESCOTT's personal account TWO HUNDRED THOUSAND  
7           DOLLARS (\$200,000) , as an investment in an Auburn Multi Family Apartment project in  
8           Auburn, Placer County, California. The terms of the Auburn investment entitled the  
9           DONECKERS to a ten percent (10%) ownership interest in the project. A copy of a Term Sheet  
10          Agreement which includes this project, among two (2) others, and transmitted on September  
11          29, 2008 is attached as **EXHIBIT 8**. A redacted copy of the Schwab Wire Transfer  
12          Confirmation is attached hereto as **EXHIBIT 8.1**. This project is also referred to in a document  
13          entitled Term Sheet, dated December 31, 2008, hereafter more fully described and attached as  
14          **Exhibit 9**.

15           **5.       ATWATER DEVELOPMENT**  
16                   **\$200,000.00**  
17                   **September 30, 2008**

18          On September 30, 2008, the DONECKERS, at and in response to Defendants  
19          WESCOTT's and SINGAL's requests, and in reliance on a written "Term Sheet" prepared by  
20          Defendants, wired to Defendant WESCOTT's personal account TWO HUNDRED THOUSAND  
21          DOLLARS (\$200,000.00), as an investment in Atwater, California. The terms of the Atwater  
22          Development investment entitled the DONECKERS to a ten percent (10%) ownership interest  
23          in the project. A copy of a Term Sheet Agreement which includes this project, among two (2)  
24          others, and transmitted on September 29, 2008 is attached as **EXHIBIT 8**. A redacted copy of  
25          the Schwab Wire Transfer Confirmation is attached hereto as **EXHIBIT 8.1**

26          Following transfers of the funds referred to above, in the aggregate amount of  
27          \$250,000.00 (Promissory Note) and \$600,000.00 (Projects) in the total amount of \$850,000.00,  
28          the DONECKERS, at and in response to Defendants WESCOTT's and SINGAL's further  
29          requests, and in reliance on a written two page December 2008 Term Sheet Agreement  
30          prepared by Defendants, advanced to WESCOTT an additional \$862,917.00 for the purpose of

1 investments in projects to be identified, which sum was to accrue interest at 15%, until  
2 converted to projects. A copy of the December 31, 2008 "Term Sheet Agreement" is attached  
3 hereto as **EXHIBIT 9**.

4 At the end of calendar year 2008, following discussions between the DONECKERS,  
5 SINGAL and WESCOTT, an overall agreement (the December 2008 Term Sheet Agreement)  
6 was reached between Defendants WESCOTT and SINGAL and the DONECKERS which  
7 confirmed and set forth in detail all funds, loans and investments, previously advanced and to  
8 be advanced by the DONECKERS to WESCOTT and SINGAL, whether for project participation  
9 or loans (later to be converted to project participation), which totaled \$1,712,917.00 plus an  
10 agreed upon amount of unpaid interest owed in the amount of \$37,083.33 from Wescott,  
11 totaling \$1,750,000.00.

12 The DONECKERS are informed and believe that the December 2008 Term Sheet  
13 Agreement was prepared by Defendant SINGAL. That Term Sheet Agreement was signed by  
14 WESCOTT as President of Surprise Development Inc., by SINGAL, as Principal of Strategic  
15 Development Holding Company, LLC, and by the DONECKERS, and reflects a "Closing Date of  
16 the Transaction" of Wednesday December 31, 2008. Success of each of the five (5)  
17 investments was based on obtaining funds from third party sources, here Plaintiff  
18 DONECKERS, and from other sources – particularly Defendants WESCOTT and SINGAL–  
19 which funds were to be used for the purpose of inducing the owners of the project real  
20 properties to sell/convey them to the Defendants on terms which were based on seller  
21 carryback financing and additional funds to be supplied by Defendants WESCOTT and SINGAL  
22 The agreement that Defendants WESCOTT and SINGAL would provide funds  
23 necessary to complete the projects is confirmed in the December 31, 2008 Term Sheet (Exhibit  
24 9), which states:

25 *Construction Debt. Surprise Development, Inc. will borrow and*  
26 *guarantee, as necessary, all construction financing for each*  
*project.*

27 Of the five (5) investments, Plaintiffs DONECKERS are informed and believe that all are  
28 valueless and/or title to them has been lost because Defendants did not have or refused to

**COMPLAINT FOR DAMAGES**

1 make the necessary financial resources available, in order to complete the projects in a timely  
2 and profitable manner, which state of facts, of necessity, was known to the Defendants, but not  
3 disclosed to the DONECKERS, before Defendants solicited and received funds from them.

4 Well after the funds had been solicited and received from the DONECKERS, Defendant  
5 SINGAL revealed to them that a majority of those funds was converted by WESCOTT to his  
6 personal use, unrelated to project purposes.

7 The material misrepresentations and failures to disclose the true facts concerning the  
8 \$250,000 promissory note were repeated with all five (5) of the "investments" and with loans  
9 thereafter, with the result that the DONECKERS advanced \$1,712,917 to Defendants in  
10 reliance on untruthful, incomplete and patently misleading information provided to them by  
11 Defendants in order to induce them to make the investments and loans they did.

#### 12 **TOTAL INVESTED**

13 The total funds invested with and loaned to Defendants WESCOTT and SINGAL by the  
14 DONECKERS amount to ONE MILLION SEVEN HUNDRED AND TWELVE THOUSAND NINE  
15 HUNDRED SEVENTEEN DOLLARS (\$1,712,917.00), which is set forth in **Detail Charts A**  
16 **through F** below.

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#### **COMPLAINT FOR DAMAGES**



Detail Chart A - PROMISSORY NOTE			
Description	Made	Rate	Total Principal Amount
<b>Promissory Note, Secured.</b> This note accrued interest during its primary term from 07-01-08 to 12-31-08, in the amount of \$18,750.00, and continues to accrue on the principal until paid (See Detail Chart D).	07-01-08	15%	\$ 250,000.00
			\$ 250,000.00

Detail Chart B - INVESTMENTS		
Pursuant to the previously agreed upon terms, confirmed and set forth in the December 31, 2008 Term Sheet, the investments made by the Doneckers with Wescott and Singal are set forth below:		
Description	Made	Total Amount
<b>Investment</b> Lincoln Wildhorse	08-15-08	\$ 50,000.00
<b>Investment</b> Livingston Retail Pad	08-22-08	\$ 50,000.00
<b>Investment</b> Panama Boca Del Drago	09-29-08	\$ 100,000.00
<b>Investment</b> Auburn Multi Family	09-29-08	\$ 200,000.00
<b>Investment</b> Atwater Development	09-28-08	\$ 200,000.00
		\$ 600,000.00

Detail Chart C - LOANS			
As set forth in the December 31, 2008 Term Sheet, the loans made by the Doneckers to and with Wescott and Singal are set forth below:			
Description	Made	Rate	Total Amount
<b>Loan</b> Unsecured - but by Agreement, to be secured. This loan accrued interest from 09-29-08 until 12-31-2008 in the amount of \$17,500, and continues to accrue interest on the principal until paid (See Detail Chart D).	09-29-08	15%	\$ 500,000.00
<b>Loan</b> Unsecured - but by Agreement, to be secured. This loan accrues interest from 12-31-08 until paid.	12-31-2008	15%	\$ 362,916.67
			\$ 862,916.67

# COMPLAINT FOR DAMAGES

Detail Chart D - INTEREST ACCRUED AS OF 12-31-2008			
Investment Description	Period	Rate	Total Amount
Interest on \$250,000 Promissory Note (Detail Chart A)	07-01-2008 to 12-31-2008*	15%	\$ 18,750.00
Interest on Unsecured Loan of \$500,000.00 (Detail Chart C)	09-29-2008 to 12-31-2008*	15%	\$ 18,750.00
Interest Adjustment (Rounding, See Note)			\$ (416.67)
			\$ 37,083.33
<p>*Note: Although accrued interest totaled \$37,500 as 12-31-2008, Plaintiffs and Defendants agreed to "round the number down" on the "12-31-2008 Term Sheet" in order to produce an even total amount due of \$1,750,000.00 for all Loans, Investments, and accrued Interest. For this reason, the 12-31-2008 Term Sheet reflects "Interest Gain of \$37,083.33" rather than \$37,500.00. Interest on these principal amounts, and on the \$362,917.67 loan made on 12-31-2008, continue to accrue until paid.</p>			

Detail Chart E - TOTALS	
Description	Total Amount
Detail Chart A Promissory Note (Secured)	\$ 250,000.00
Detail Chart B Investments	\$ 600,000.00
Detail Chart C Loans (Unsecured)	\$ 862,916.67
Detail Chart D Interest	\$ 37,083.33
	\$ 1,750,000.00

Detail Chart F - TRANSFERS AND MONEY SOURCES			
Date	From	To	Amount
07-02-2008	Schwab / Donecker	Westcott / Wells Fargo	\$ 250,000.00
08-15-2008	Schwab / Donecker	CoAmerica Bank Wildhorse	\$ 50,000.00
08-22-2008	Schwab / Donecker	County Bank Livingston	\$ 50,000.00
09-29-2008	Schwab / Donecker	Wescott / Wells Fargo	\$ 100,000.00
09-30-2008	Schwab / Donecker	Wescott / Wells Fargo	\$ 100,000.00
09-30-2008	USE Credit Union / Donecker	Wescott / Wells Fargo	\$ 400,000.00
10-01-2008	Wells Fargo / Donecker	Wescott / Wells Fargo	\$ 400,000.00
12-31-2008	Schwab / Donecker	Wescott / Wells Fargo	\$ 362,917.00
			\$ 1,712,917.00

# COMPLAINT FOR DAMAGES

1 **FIRST CAUSE OF ACTION**

2 **Breach of Written Contract (Promissory Note) - \$250,000.00**

3 **(Against Defendants Carl A. Wescott and Does)**

4 1. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
5 contained in Sections I and II above, and all paragraphs therein.

6 2. Although the NOTE was for a period of three (3) months, Defendant WESCOTT  
7 told Plaintiff KRISTA L. DONECKER that he would continue to "roll the note over" at the  
8 promised fifteen percent interest (15%) until the DONECKERS called the NOTE due.

9 3. Despite the requirement contained in the terms of the NOTE and the oral  
10 assurance by Defendant WESCOTT that the NOTE would be secured by a deed of trust, in  
11 fact, no deed of trust was ever recorded, as set forth below.

12 4. On July 15, 2008, the DONECKERS received an email from Defendant  
13 WESCOTT which claimed that deed of trust was rejected by the Sonoma County Recorder due  
14 to a notarial acknowledgment error (*Exhibit 5*).

15 5. Defendant WESCOTT informed the DONECKERS that he would have the deed  
16 corrected and resubmitted to be recorded by August 1, 2008. The DONECKERS, in reliance on  
17 the truthfulness and integrity of Defendant WESCOTT, did not pursue further the status of the  
18 promised deed of trust. In fact, the DONECKERS heard nothing further from Defendant  
19 WESCOTT regarding the deed and only learned of the foreclosure of the property which was to  
20 have secured the NOTE in early July 2010, as a result of a foreclosure by the holder of an  
21 earlier recorded lien against that same property.

22 6. The status of the earlier encumbrances on the Healdsburg property was not  
23 disclosed to the DONECKERS at the time they loaned money to WESCOTT, or thereafter.

24 7. In addition to discovery of earlier recorded lien holders, the DONECKERS also  
25 discovered that the deed of trust securing the NOTE had never been recorded and as a result,  
26 they did not appear as creditors or lienholders at the time of the foreclosure.

27 8. Pursuant to the NOTE, the Principal Amount of \$250,000.00 bears interest at the  
28 rate of 15% percent and was due in full on October 1, 2008. Interest accrues at fifteen (15%)

**COMPLAINT FOR DAMAGES**

1 percent from the date of the note (July 1, 2008) until paid.

2 9. Despite repeated requests that Defendant WESCOTT pay the DONECKERS  
3 the principal and interest due on the NOTE, based on the personal guarantee set forth in the  
4 NOTE which stated **"Debtor also personally guarantees full repayment and also all the**  
5 **terms above"**, Defendant WESCOTT has failed and refused to pay the NOTE.

6 10. Because the Sonoma County property which secured the NOTE was foreclosed  
7 upon and purchased via bid by a senior lender / lienholder, Plaintiffs DONECKERS' security  
8 interest in the property has been extinguished, necessitating the within action.

9 11. The NOTE provides that in the event legal action is required to enforce the terms  
10 of the NOTE, Plaintiffs are entitled recover their reasonable attorney's fees.

11 12. As a proximate result of the breach of contract Defendant WESCOTT, as herein  
12 alleged, Plaintiffs DONECKER, have suffered substantial monetary damages. Those damages  
13 include, but are not limited to:

- 14 a. Loss of the principal sum of \$250,000
- 15 b. Loss of 15% interest on the sum of \$250,000
- 16 c. Loss of advantage of availability of the funds loaned;
- d. Attorneys fees and costs;
- e. Other damages in an amount according to proof at trial.

17 13. Plaintiffs DONECKERS will continue to incur costs and expenses associated with  
18 the unpaid NOTE. As a result, Plaintiffs DONECKERS have not yet determined the full  
19 amount of damage sustained as a result of the acts by Defendant WESCOTT described herein,  
20 and will amend this Complaint to set forth the full amount when the same has been ascertained.

21 14. In making the representations to Plaintiffs as herein alleged, Defendants  
22 concealed true facts which were material to the ability of Plaintiffs to preserve their welfare.  
23 Defendants knew the information they withheld from the DONECKERS would, if disclosed to  
24 them, be likely to result in measures advantageous to Plaintiffs but disadvantageous to  
25 Defendants' pecuniary interests. Despite this, Defendants withheld the information in order to  
26 induce the DONECKERS' reliance.

27 15. Plaintiffs DONECKERS reasonably relied on Defendants to provide them with  
28 information in accordance with their best interests, as they had insured them they would do,

**COMPLAINT FOR DAMAGES**

1 and they had no reasonable basis for suspecting that Defendants were withholding material  
2 information from them.

3 16. Defendants' actions were willful, knowing, malicious, fraudulent, oppressive,  
4 intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in reckless and  
5 conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and shocking to the  
6 sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and  
7 punitive damages in an amount sufficient to punish and deter such conduct in the future.

8 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants as set  
9 forth below, plus general, exemplary, and punitive damages.

## 10 **SECOND CAUSE OF ACTION**

### 11 **Common Count for Money Lent - \$250,000.00**

#### 12 **(Against Defendants Carl A. Wescott and Does)**

13 17. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
14 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
15 Paragraphs 1-16, above.

16 18. On July 1, 2008, Defendant WESCOTT became indebted to Plaintiffs  
17 DONECKERS in the amount of \$250,000 pursuant to the terms of the NOTE.

18 19. Plaintiffs DONECKERS have demanded payment from Defendant WESCOTT  
19 but the amount due has not been paid.

20 20. Pursuant to the NOTE, the Principal Amount of \$250,000 bears interest at the  
21 rate of 15% percent and was due in full on October 1, 2008.

22 21. The NOTE provides that in the event legal action is required to enforce the terms  
23 of the NOTE, Plaintiffs are entitled recover their reasonable attorney's fees.

24 22. Plaintiffs DONECKERS will continue to incur costs and expenses associated with  
25 the unpaid NOTE. As a result, Plaintiffs have not yet determined the full amount of damage  
26 sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this  
27 Complaint to set forth the full amount when the same has been ascertained

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## **COMPLAINT FOR DAMAGES**

1 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants as set  
2 forth below.

3 **THIRD CAUSE OF ACTION**

4 **Breach of Contract**

5 **Loss of Principal Investments (\$600,000.00) and Anticipated Profits**  
6 **(Against All Defendants)**

7 23. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
8 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
9 Paragraphs 1-22, above.

10 24. As set forth above, Plaintiffs DONECKERS invested \$600,000 with Defendants  
11 in projects which were to have been acquired from sellers and thereafter developed for the  
12 purpose of producing profits to be distributed to the DONECKERS and others as their  
13 ownership / investment / shares appear.

14 25. Of the five (5) investments detailed above, Plaintiffs DONECKERS are informed  
15 and believe all are valueless and/or title to them has been lost because Defendants did not  
16 have or refused to make the necessary financial resources available, in order to complete the  
17 projects in a timely and profitable manner, which state of facts, of necessity, was known to the  
18 Defendants, but not disclosed to the DONECKERS, before Defendants solicited and received  
19 funds from them.

20 26. Well after the funds had been solicited and received from the DONECKERS,  
21 Defendant SINGAL revealed to them that a majority of those funds was converted by  
22 WESCOTT to his personal use, unrelated to project purposes.

23 27. The material misrepresentations and failures to disclose the true facts  
24 concerning the \$250,000 promissory note were repeated with all five (5) of the "investments"  
25 with the result that the DONECKERS "invested" \$600,000.00 with Defendants in reliance on  
26 untruthful, incomplete and patently misleading information provided by them to the  
27 DONECKERS in order to induce the DONECKERS to make the investments they did.

28 ///

**COMPLAINT FOR DAMAGES**

28. Defendants' actions were willful, knowing, malicious, fraudulent, oppressive, intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in reckless and conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and shocking to the sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and punitive damages in an amount sufficient to punish and deter such conduct in the future.

29. In making the representations to Plaintiffs as herein alleged, Defendants concealed true facts which were material to the ability of Plaintiffs to preserve their welfare. Defendants knew the information they withheld from the DONECKERS would, if disclosed to them, be likely to result in measures advantageous to Plaintiffs but disadvantageous to Defendants' pecuniary interests. Despite this, Defendants withheld the information in order to induce the DONECKERS' reliance.

30. Plaintiffs DONECKERS reasonably relied on Defendants to provide them with information in accordance with their best interests, as they had insured them they would do, and they had no reasonable basis for suspecting that Defendants were withholding material information from them.

WHEREFORE, Plaintiffs DONECKERS pray for return of their principal investments, statutory interest thereon, judgment against Defendants, and each of them, as set forth below, plus general, exemplary, and punitive damages.

#### FOURTH CAUSE OF ACTION

## Breach of Contract - Unjust Enrichment

**(Against All Defendants)**

31. Plaintiffs incorporate by reference as though fully set forth herein, the allegations contained in Sections I and II above, all paragraphs and subparagraphs therein, and Paragraphs 1-30, above.

32. Concerning the five (5) investment projects Plaintiffs have performed all conditions, covenants and promises required by them to be performed in accordance with the initial agreements for the projects, all as confirmed in the December 31, 2008 Term Sheet (Exhibit 9).



1 33. Following their investments in the five (5) projects, Plaintiffs are informed and  
2 believe that all are valueless and/or title to them has been lost because Defendants did not  
3 have or refused to make the necessary financial resources available, in order to complete the  
4 projects in a timely and profitable manner.

5 34. Allowing the Defendants to retain the consideration / investments (\$600,000.00)  
6 paid to them under the five (5) agreements and the confirming Term Sheet (Exhibit 9), would  
7 constitute unjust enrichment as Defendants concealed the true nature of the five (5)  
8 investments, and failed to take those steps necessary to assure their successful completion,  
9 and, Plaintiffs DONECKER are informed and believe, converted to their own use and  
10 possession the majority of the funds invested by Plaintiffs DONECKERS.

11 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
12 each of them, as set forth below.

13 **FIFTH CAUSE OF ACTION**

14 **Breach of Contract - Money Lent - \$500,000.00**

15 **(Against All Defendants)**

16 35. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
17 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
18 Paragraphs 1-34, above.

19 36. On September 29, 2008, by agreement between Defendant WESCOTT and  
20 Plaintiffs DONECKER, the DONECKERS loaned WESCOTT \$500,000 at 15% interest, until  
21 paid.

22 37. That loan was confirmed by the written December 31, 2008 Term Sheet (Exhibit  
23 9). That document bears the initials and signatures of Carl Wescott, President, Surprise  
24 Development, Inc.; Suneet Singal, Principal, Strategic Development Holding Company LLC;  
25 Krista Donecker; and Stephen Donecker.

26 38. Plaintiffs have demanded payment of the principal and accrued interest by  
27 Defendants, who have failed and refused to do so. Plaintiffs are entitled to principal and  
28 accrued interest at fifteen (15%) on that loan, subject to proof at trial.

**COMPLAINT FOR DAMAGES**

1 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
2 each of them, as set forth below.

3 **SIXTH CAUSE OF ACTION**

4 **Breach of Contract - Money Lent - \$362,916.67**

5 **(Against All Defendants)**

6 39. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
7 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
8 Paragraphs 1-38, above.

9 40. On December 31, 2008, by agreement between Defendants and Plaintiffs, the  
10 DONECKERS loaned WESCOTT the sum \$362,916.67, at 15% interest, until paid.

11 41. That loan was confirmed by the written December 31, 2008 Term Sheet (Exhibit  
12 9). That document bears the initials and signatures of Carl Wescott, President, Surprise  
13 Development, Inc.; Suneet Singal, Principal, Strategic Development Holding Company LLC;  
14 Krista Donecker; and Stephen Donecker.

15 42. Plaintiffs have demanded payment of the principal and accrued interest by  
16 Defendants, who have failed and refused to do so. Plaintiffs are entitled to principal and  
17 accrued interest at fifteen (15%) on that loan, subject to proof at trial.

18 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
19 each of them, as set forth below.

20 **SEVENTH CAUSE OF ACTION**

21 **Common Count for Money Lent - \$500,000.00**

22 **(Against All Defendants)**

23 43. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
24 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
25 Paragraphs 1-42, above.

26 44. On September 29, 2008, by agreement between Defendant WESCOTT and  
27 Plaintiffs DONECKER, the DONECKERS loaned WESCOTT \$500,000 at 15% interest, until  
28 paid.

1 45. That loan was confirmed by the written December 31, 2008 Term Sheet (Exhibit  
2 9). That document bears the initials and signatures of Carl Wescott, President, Surprise  
3 Development, Inc.; Suneet Singal, Principal, Strategic Development Holding Company LLC;  
4 Krista Donecker; and Stephen Donecker.

5 46. Plaintiffs have demanded payment of the principal and accrued interest by  
6 Defendants, who have failed and refused to do so. Plaintiffs are entitled to principal and  
7 accrued interest at fifteen (15%) on that loan, subject to proof at trial.

8 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
9 each of them, as set forth below.

10 **EIGHTH CAUSE OF ACTION**

11 **Common Count for Money Lent - \$362,916.67**

12 **(Against All Defendants)**

13 47. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
14 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
15 Paragraphs 1-46, above.

16 48. On December 31, 2008, by agreement between Defendant WESCOTT and  
17 Plaintiffs DONECKER, the DONECKERS loaned WESCOTT \$362,916.67 at 15% interest, until  
18 paid.

19 49. That loan was confirmed by the written December 31, 2008 Term Sheet (Exhibit  
20 9). That document bears the initials and signatures of Carl Wescott, President, Surprise  
21 Development, Inc.; Suneet Singal, Principal, Strategic Development Holding Company LLC;  
22 Krista Donecker; and Stephen Donecker.

23 50. Plaintiffs have demanded payment of the principal and accrued interest by  
24 Defendants, who have failed and refused to do so. Plaintiffs are entitled to principal and  
25 accrued interest at fifteen (15%) on that loan, subject to proof at trial.

26 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
27 each of them, as set forth below.

28 ///

**COMPLAINT FOR DAMAGES**

1 **NINTH CAUSE OF ACTION**

2 **Deceit - Concealment and Suppression of Fact**

3 **(Against All Defendants)**

4 51. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
5 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
6 Paragraphs 1-50 above.

7 52. When Plaintiffs DONECKERS loaned \$250,000.00 to Defendant WESCOTT,  
8 they were not informed by him that of the \$1,844,335.00 in prior encumbrances on the Sonoma  
9 property, a significant portion, if not the entire amount, was in arrears / default. Apparently the  
10 amounts reflected by those prior encumbrances were sums borrowed by Defendant WESCOTT  
11 for development projects and/or his personal use.

12 53. In addition, after the foreclosure and discovery that Defendant WESCOTT had  
13 failed to record the deed of trust securing the NOTE, the DONECKERS learned that the  
14 \$1,844,335.00 was comprised of promissory notes Defendant WESCOTT had previously  
15 executed to other parties, each "secured" by the same Healdsburg, Sonoma County property  
16 and that some, if not all, of those notes resulted in lawsuits being brought against Defendant  
17 WESCOTT, as detailed below.

18 54. In a promissory note dated January 14, 2007 – a year and a half earlier than the  
19 NOTE to the DONECKERS – Defendant WESCOTT pledged "all ... real estate owned by the  
20 undersigned" as partial security for a \$400,000 loan at 17.5% interest made to him by a party  
21 named Rob Lonsdale. Defendant WESCOTT came into title to the Healdsburg property on  
22 October 18, 2004, and as a consequence, that property was part of "all real estate owned by  
23 [him] when the January 14 note was made to Lonsdale. As a result of default by Defendant  
24 WESCOTT in payments on that loan, a lawsuit was filed against him on August 25, 2010, in the  
25 Superior Court of the County of San Francisco, as Case Number CGC-10-502977, in re  
26 *Lonsdale v. WESCOTT*. A copy of the January 14, 2007 Note and the endorsed Lonsdale  
27 caption is attached as **EXHIBIT 10**.

28 ///

1           55. In a promissory note dated November 20, 2007 – seven months earlier than the  
2 NOTE to the DONECKERS – WESCOTT pledged the same property in Healdsburg, Sonoma  
3 County as partial security for a \$1,000,000 loan at 12% interest made to him by a party named  
4 David Kirk. As a result of his default in payments on that loan, a lawsuit was filed against him  
5 on July 23, 2010 in the Superior Court of the County of San Francisco, as Case Number CGC-  
6 10-501881, in re *Kirk vs. WESCOTT*. A copy of the November 20, 2007 note and the  
7 endorsed Kirk caption is attached as **EXHIBIT 11**.

8           56. In a promissory note dated May 7, 2008 – only 2 months before the NOTE to the  
9 DONECKERS – WESCOTT pledged the same property in Healdsburg, Sonoma County as  
10 partial security for debts in the amount of \$550,000, plus interest carried forward from prior  
11 notes in the amount of \$19,901.33, plus new interest at 18.5%, owed to a party named  
12 Frederick Fiechter. As a result of his default in payments on that note, a lawsuit was filed  
13 against him on January 15, 2010 in the Superior Court of the County of San Francisco, as Case  
14 Number CGC-10-496091, in re *Fiechter v. WESCOTT*. A copy of the May 7, 2008 note and  
15 endorsed case caption is attached as **EXHIBIT 12**.

16           57. The suppression of the existence of these facts was intended to deceive and  
17 mislead, and did deceive and mislead, Plaintiffs DONECKERS into believing that Defendant  
18 WESCOTT had the resources to repay the NOTE in accordance with its terms, that the security  
19 promised to them was sufficient to secure payment of the \$250,000 NOTE.

20           58. Defendants' failure to disclose information and suppression of information  
21 herein alleged had the intent to induce the DONECKERS to act in the manner herein alleged.

22           59. Plaintiffs, at the time of this deceit and suppression of facts occurred, and at the  
23 time Defendant WESCOTT took the actions herein alleged, were ignorant of the existence of  
24 the true facts which Defendant WESCOTT suppressed and failed to disclose. If Plaintiffs had  
25 been aware of the existence of the facts not disclosed by Defendant WESCOTT, they would not  
26 have loaned Defendant WESCOTT the initial \$250,000, or any sum, or make multiple loans and  
27 investments thereafter, or, rely on any "investment advice" whatever from either Defendant  
28 SINGAL or Defendant WESCOTT.

1           60. Defendant SINGAL had a long history of and ongoing working relationship with  
2 Defendant WESCOTT as a consequence of his employment with Defendant WESCOTT's  
3 company, Surprise Development, and had a history of procuring lenders of money to Defendant  
4 WESCOTT. Defendant SINGAL was aware of and communicated to Plaintiffs DONECKERS  
5 details of the transaction involving the \$250,000 loan to Defendant WESCOTT, and, due to his  
6 close, working relationship with Defendant WESCOTT, Defendant SINGAL knew, or should  
7 have known, that any loan made by the Plaintiffs to WESCOTT was extremely risky. After  
8 Defendant WESCOTT had failed and/or refused to pay the Plaintiffs DONECKERS the money  
9 he owes them, Defendant SINGAL informed the DONECKERS that he, SINGAL, owed  
10 substantial sums of money to WESCOTT, putting at issue his objectivity and reliability in  
11 advising the DONECKERS concerning loaning money to or investing with WESCOTT.  
12 Defendant SINGAL suppressed the true facts from Plaintiffs DONECKERS in order to induce  
13 them to make a loan to Defendant WESCOTT which in turn would be used to fund projects in  
14 which Defendant SINGAL had a personal interest and from which he would benefit if they were  
15 successful.

16           61. Plaintiffs DONECKERS, at the time this failure to disclose and suppression of  
17 facts occurred, and at the time Plaintiffs took the actions herein alleged, were ignorant of the  
18 existence of the facts which Defendant SINGAL and Defendant WESCOTT suppressed and  
19 failed to disclose. If Plaintiffs DONECKERS had been aware of the existence of the facts not  
20 disclosed by Defendant SINGAL and Defendant WESCOTT, Plaintiffs would not have trusted  
21 Defendant SINGAL or Defendant WESCOTT and would not have loaned \$250,000 to  
22 Defendant WESCOTT, or made investments or additional loans in the total sum of  
23 \$1,462,917.00.

24           62. Plaintiffs' reliance on Defendant SINGAL and Defendant WESCOTT was  
25 justified because both Defendants had and have a legal duty to act in accordance with  
26 applicable law and to refrain from conduct which may be in violation of the law.

27           63. Plaintiffs' reliance on Defendant SINGAL and Defendant WESCOTT was further  
28 justified because Defendants had and have the legal duty to disclose to prospective investors

1 all known facts which materially affect the value of investments.

2 64. As a direct and proximate result of the deceitful suppression of fact by  
3 Defendants as herein alleged, Plaintiffs have been damaged in an amount according to proof at  
4 trial.

5 65. Plaintiffs DONECKERS will continue to incur costs and expenses associated with  
6 the unpaid NOTE. As a result, Plaintiffs DONECKERS have not yet determined the full  
7 amount of damage sustained as a result of the acts by Defendant WESCOTT described herein,  
8 and will amend this Complaint to set forth the full amount when the same has been ascertained.

9 67. In making the representations to Plaintiffs as herein alleged, Defendants  
10 concealed true facts which were material to the ability of Plaintiffs to preserve their welfare.

11 68. Defendants knew the information they withheld from Plaintiffs would, if disclosed  
12 to the Plaintiffs, be likely to result in measures advantageous to Plaintiffs but disadvantageous  
13 to Defendants' pecuniary interests. Despite this, Defendants withheld the information in order  
14 to induce Plaintiffs' reliance.

15 69. Plaintiffs reasonably relied on Defendants to provide them with information in  
16 accordance with their best interests, as they had insured them they would do, and they had no  
17 reasonable basis for suspecting that Defendants were withholding material information from  
18 them.

19 70. Defendants' actions were willful, knowing, malicious, fraudulent, oppressive,  
20 intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in reckless and  
21 conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and shocking to the  
22 sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and  
23 punitive damages in an amount sufficient to punish and deter such conduct in the future.

24 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
25 each of them, as set forth below, plus general, exemplary, and punitive damages,

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**COMPLAINT FOR DAMAGES**



1 **TENTH CAUSE OF ACTION**

2 **Negligence**

3 **(Against All Defendants)**

4 71. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
5 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
6 Paragraphs 1-70, above.

7 72. At all times mentioned herein, and during the pendency of all transactions  
8 involving Plaintiffs DONECKERS and the Defendants, Defendant SINGAL was aware of the  
9 financial irresponsibility and misdeeds of his employer and partner, Defendant WESCOTT.

10 73. During the time period February 2, 2008 through April 27, 2010, a date range  
11 which commenced several months prior to Defendant SINGAL's first recommendation that  
12 Plaintiffs DONECKERS loan money to Defendant WESCOTT, Defendant SINGAL, in his  
13 capacity as Project Manager for Surprise Development, received at his personal residence  
14 address of 101 Barnhart Circle, Sacramento, a series of monthly invoices from a Professional  
15 Land Surveying company called "Michael Dequine and Associates" in Sacramento, California.  
16 Michael Dequine and Associates was retained to provide professional services to "Oroville  
17 Industrial Park, LLC", a company controlled by Defendant WESCOTT and managed by  
18 Defendant SINGAL.

19 74. No payments were made by Defendant WESCOTT, Defendant SINGAL, or their  
20 various business entities, on any Dequine invoices sent to Defendant SINGAL's home address  
21 between the period February 1, 2008 and April 27, 1010. As a consequence, on April 27,  
22 2010, Dequine & Associates made a written demand for payment in full from Defendant  
23 WESCOTT, and sent a copy of that demand to Defendant WESCOTT at his office address in  
24 San Francisco and to Defendant SINGAL at his Sacramento residence.

25 75. Thereafter, Dequine & Associates filed an action for breach of contract and  
26 damages exceeding \$200,000 against Carl A. WESCOTT on September 29, 2010, in the  
27 Sacramento County Superior Court, Case Number 34-2010-00088426, in re *Dequine &*  
28 *Associates, Inc.* A copy of the case caption is attached hereto as **EXHIBIT 13.**

**COMPLAINT FOR DAMAGES**

1           76. Defendant SINGAL was negligent and careless and damaged Plaintiffs  
2 DONECKERS by his failure to inform Plaintiffs DONECKERS, at the time he recommended  
3 that they loan money to Defendant WESCOTT, that Defendant WESCOTT was either in severe  
4 financial arrears and/or in breach of contract with various vendors, including Dequine &  
5 Associates, involving projects managed or controlled by Defendants SINGAL and WESCOTT.

6           77. Defendant WESCOTT was negligent and careless and damaged Plaintiffs  
7 DONECKERS by his failure to inform Plaintiffs DONECKER, at the time he executed the NOTE  
8 for \$250,000, that he was in severe financial arrears on sums of money owed to various  
9 vendors, including Dequine & Associates, Inc.

10           78. Failure to inform Plaintiffs DONECKERS of those facts would mislead Plaintiffs  
11 DONECKERS and did in fact mislead Plaintiffs DONECKERS to trust Defendant SINGAL and  
12 Defendant WESCOTT and loan monies to Defendant WESCOTT on multiple occasions during  
13 the same period of time Defendant WESCOTT was failing or refusing to pay contractual sums  
14 owed to other parties.

15           79. As a direct and proximate result of Defendants' negligence and carelessness,  
16 Plaintiffs DONECKERS have sustained damage in a sum in excess of the minimum jurisdiction  
17 of this court, in an amount according to proof at trial.

18           80. Plaintiffs DONECKERS have not yet determined the full amount of damage  
19 sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this  
20 Complaint to set forth the full amount when the same has been ascertained.

21           81. Defendants' actions were willful, knowing, malicious, fraudulent, oppressive,  
22 intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in reckless and  
23 conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and shocking to the  
24 sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and  
25 punitive damages in an amount sufficient to punish and deter such conduct in the future.

26           WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
27 each of them, as set forth below, plus general, exemplary, and punitive damages.

28 ///

**COMPLAINT FOR DAMAGES**

**ELEVENTH CAUSE OF ACTION**

**Negligent Misrepresentation**

**(Against All Defendants)**

82. Plaintiffs incorporate by reference as though fully set forth herein, the allegations contained in Sections I and II above, all paragraphs and subparagraphs therein, and Paragraphs 1-81, above.

83. Defendants represented to Plaintiffs DONECKERS that each and every one of the five (5) "projects" in which they were induced to invest were genuine business opportunities with a high likelihood of success and profit. Plaintiffs DONECKERS justifiably relied on said representations, to their detriment.

84. At the time Plaintiffs DONECKERS entered into the project contracts, and at all times relevant hereto, Defendants did not, in fact, intend to or provide full and accurate correct information concerning the projects.

85. One or more of the Defendants' agents, members or principals knew that they representations they made were false at the time when one or more of the Defendants, their agents, members or principals made the representations, or, they made the representations without any reasonable grounds for believing them to be true and without concern for the effect those representations would have on Plaintiffs DONECKER.

86. Defendants' representations were intended, and did in fact, induce Plaintiffs DONECKERS to expend time, money and efforts and to put at risk their financial standing in order to pursue the project.

87. Plaintiffs DONECKER, unaware of the falsity of the representations made were by Defendants, and each of them, expended substantial time, money and effort to pursue the benefits of the project promised to them by Defendants.

88. As a direct and immediate result of Plaintiffs DONECKERS' reliance on the Defendants' misrepresentations, Plaintiffs DONECKERS have suffered damages.

89. Plaintiffs DONECKERS have not yet determined the full amount of damage sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this

**COMPLAINT FOR DAMAGES**

1 Complaint to set forth the full amount when the same has been ascertained.

2 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
3 each of them, as set forth below.

4 **TWELFTH CAUSE OF ACTION**

5 **Breach of Fiduciary Duty**

6 **(Against Defendant Carl A. Wescott and Does)**

7 90. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
8 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
9 Paragraphs 1-89, above.

10 91. Plaintiffs DONECKERS are informed and believe and thereon allege that at all  
11 times herein mentioned, Defendant WESCOTT owed a fiduciary duty to Plaintiffs DONECKERS  
12 as lenders to him and investors in all of the projects set forth above, a duty to act in the best  
13 interests of Plaintiffs DONECKERS, with utmost honesty and fair dealing, and further to avoid  
14 self-dealing and misappropriation of assets.

15 92. Plaintiffs DONECKERS are informed and believe and based thereon allege that  
16 at all times relevant, and particularly from July 1, 2008 to December 31, 2008, Defendant  
17 WESCOTT breached his fiduciary obligation to Plaintiffs DONECKERS by falsification of books  
18 and records, misappropriation and embezzlement of corporate assets, and, by defaulting upon  
19 obligations to prior lenders and investors.

20 93. Defendant SINGAL informed Plaintiffs DONECKERS that Defendant WESCOTT  
21 converted to his own use and possession, the majority of the funds loaned by Plaintiffs  
22 DONECKERS to Defendant WESCOTT and the investments made by them in the projects as  
23 referred to above, or, has secreted the monies loaned for or invested in those projects in a  
24 location or account unlikely to be discovered by Plaintiffs DONECKER.

25 94. As a direct and proximate result of the foregoing acts and omissions, Plaintiffs  
26 DONECKERS have been damaged.

27 95. Plaintiffs DONECKERS have not yet determined the full amount of damage  
28 sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this

1 Complaint to set forth the full amount when the same has been ascertained.

2 96. Defendants' actions were willful, knowing, malicious, fraudulent, oppressive,  
3 intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in reckless and  
4 conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and shocking to the  
5 sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and  
6 punitive damages in an amount sufficient to punish and deter such conduct in the future.

7 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants as set  
8 forth below, plus general, exemplary, and punitive damages.

9 **THIRTEENTH CAUSE OF ACTION**

10 **Fiduciary Abuse**

11 **(Against All Defendants)**

12 97. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
13 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
14 Paragraphs 1-98, above.

15 99. Each of the Defendants herein stood in a relationship of trust and confidence to  
16 Plaintiffs. Specifically, Defendant WESCOTT and SINGAL stood in a special relationship to  
17 Plaintiffs in that, individually and/or through their agents, they represented to Plaintiffs that they  
18 could and would provide them with guidance, all in their best interest. Defendants knew that  
19 Plaintiffs would place special trust and confidence in them, and they did. Defendants ratified  
20 the acts of their agents, as described above.

21 100. Defendants stood in a special relationship to Plaintiffs as they were partners with  
22 them after they named Plaintiff KRISTA L. DONECKER as a Project Manager for Surprise  
23 Development, an entity owned and managed by Defendant WESCOTT, and further appointed  
24 her as manager of individuals projects as referred to above.

25 101. Additionally, Defendants were acting as principals to the contract and therefore  
26 they had a special relationship which required they act in good faith with regards to the funds  
27 Plaintiffs entrusted to them.

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**COMPLAINT FOR DAMAGES**



1 Plaintiffs as alleged above, and actively participated in the operation of WESCOTT's fraudulent  
2 scheme by enabling and facilitating the fraudulent scheme. In acting and failure to act as  
3 alleged above, Defendant SINGAL actively and affirmatively assisted WESCOTT in the  
4 fraudulent scheme and helped conceal it from Plaintiffs. Defendant SINGAL enabled the  
5 fraudulent scheme to flourish and stay hidden from its victims, the Plaintiffs.

6 109. Defendant SINGAL substantially assisted and aided and abetted Defendant  
7 WESCOTT's breach of fiduciary duties with the specific intent to facilitate conduct, i.e., the  
8 fraudulent scheme, which constituted a material part of said breach.

9 110. Defendant SINGAL was bound by his fiduciary duty to Plaintiffs to act with their  
10 best interests in mind. However, in doing the things herein above alleged, Defendant SINGAL  
11 disregarded Plaintiffs' best interests by causing Plaintiffs to act in accordance with Defendants'  
12 own wishes, and to benefit themselves and not Plaintiffs, thereby misappropriating and/or  
13 diverting Plaintiffs' funds in the furtherance of Defendants' own pecuniary interests.

14 111. As a proximate result of Defendant SINGAL's conduct, Plaintiffs suffered  
15 economic damages in an amount according to proof at trial.

16 112. Defendant SINGAL's actions were willful, knowing, malicious, fraudulent,  
17 oppressive, intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in  
18 reckless and conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and  
19 shocking to the sensibilities of reasonable persons, and Plaintiffs are entitled to an award of  
20 exemplary and punitive damages in an amount sufficient to punish and deter such conduct in  
21 the future.

22 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants as set  
23 forth below.

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**COMPLAINT FOR DAMAGES**



**FIFTEENTH CAUSE OF ACTION**

**Aiding and Abetting Fiduciary Abuse**

**(Against Defendant Carl A. Wescott and Does)**

113. Plaintiffs incorporate by reference as though fully set forth herein, the allegations contained in Sections I and II above, all paragraphs and subparagraphs therein, and Paragraphs 1-112, above.

114. Defendant Carl WESCOTT made representations to Plaintiffs with the actual intent to defraud and to induce them to invest monies in schemes involving all other named and unnamed Defendants, to forbear from withdrawing from the investments and to subsequently reinvest additional monies.

115. Defendant WESCOTT at all material times had actual knowledge of his fiduciary duties to Plaintiffs with respect to Plaintiffs' investments with all Defendants. Defendant WESCOTT at all material times knew that each of the named and unnamed Defendants was violating fiduciary duties to Plaintiffs as alleged above, and actively participated in the operation of fraudulent schemes by enabling and facilitating the fraudulent schemes. In acting and failure to act as alleged above, Defendant WESCOTT actively and affirmatively assisted all other Defendants in the fraudulent schemes and helped conceal them from Plaintiffs. Defendant WESCOTT enabled the fraudulent schemes to flourish and stay hidden from the victims, the Plaintiffs.

116. Defendant WESCOTT substantially assisted and aided and abetted breach of fiduciary duties with the specific intent to facilitate conduct, i.e., the fraudulent schemes, which constituted a material part of said breach.

117. Defendant WESCOTT was bound by his fiduciary duty to Plaintiffs to act with their best interests in mind. However, in doing the things herein above alleged, Defendant WESCOTT disregarded Plaintiffs' best interests by causing Plaintiffs to act in accordance with Defendants' own wishes, and to benefit themselves and not Plaintiffs, thereby misappropriating and/or diverting Plaintiffs' funds in the furtherance of Defendants' own pecuniary interests.

///

**COMPLAINT FOR DAMAGES**



1 sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and  
2 punitive damages in an amount sufficient to punish and deter such conduct in the future.

3 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
4 them, as set forth below, plus general, exemplary, and punitive damages.

5 **SEVENTEENTH CAUSE OF ACTION**

6 **Negligent Infliction of Emotional Distress**

7 **(Against All Defendants)**

8 125. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
9 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
10 Paragraphs 1-124, above.

11 126. Plaintiffs DONECKERS are informed and reasonably believe and thereon allege  
12 that Defendants, and each of them, owed to Plaintiffs DONECKERS a general duty of due care,  
13 and, in their capacities as licensed real estate agents and brokers, a professional duty of care  
14 to Plaintiffs DONECKERS in connection with their rights.

15 127. The rights to and interest in real and personal property investments were injured as  
16 a result of the acts and failures to act of Defendants, and each of them, which acts and failures  
17 to act resulted in damages described herein.

18 128. Defendants, and each of them, breached the duty of care owed to Plaintiffs  
19 DONECKERS and as a cause and proximate result of the aforementioned acts, caused  
20 Plaintiffs DONECKERS to suffer extreme emotional distress. Plaintiffs DONECKERS are  
21 informed and believe that third parties also relied on Defendants' negligent representations and  
22 that those third parties contributed to the damages of Plaintiffs DONECKER.

23 129. As a breach, cause and proximate result of the aforementioned acts of Defendants,  
24 intentional or otherwise, Plaintiffs DONECKERS suffered and continue to suffer humiliation,  
25 loss of sleep, mental anguish and emotional and physical distress.

26 130. Plaintiffs DONECKERS further suffered and continue to suffer extreme anxiety over  
27 the existing loss of nearly Two Million Dollars, and the continuing and loss of potentially  
28 hundreds of thousands of dollars more in interest on savings, lost income, attorneys fees, the

benefits derived from investments they could have made elsewhere, and more.

131. Severe emotional anguish caused by the loss of the money was increased by the drastic lifestyle changes made by the DONECKERS, including selling their custom home in Davis in favor of moving into a lower-cost rental home, removing the children from private schools, loss of the family automobile, canceling and not scheduling family vacations, not buying Christmas trees and exchanging only minimal gifts on holidays and birthdays, not hosting milestone birthday celebrations, not eating out in restaurants, and similar cost-cutting measures.

132. Severe emotional anguish caused by the loss of the money was also increased by the very real fear the DONECKERS now have, only a daily basis, that WESCOTT and SINGAL have stolen the financial security of the DONECKERS' children, and the retirement and financial security of the DONECKERS. They have "lost all joy and hope in the future" and feel their mental health has declined to the point of constant sorrow, depression, anxiety and worry.

133. Plaintiffs DONECKERS have not yet determined the full amount of damage sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this Complaint to set forth the full amount when the same has been ascertained.

WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of them, as set forth below.

### **EIGHTEENTH CAUSE OF ACTION**

#### **Intentional Infliction of Emotional Distress**

#### **(Against All Defendants)**

134. Plaintiffs incorporate by reference as though fully set forth herein, the allegations contained in Sections I and II above, all paragraphs and subparagraphs therein, and Paragraphs 1-133, above.

135. Plaintiffs DONECKERS are informed and reasonably believe and thereon allege that Defendants, and each of them, owed to Plaintiffs DONECKERS a general duty of due care, and, in their capacities as licensed real estate agents and brokers, a professional duty of care to Plaintiffs DONECKERS in connection with their property rights.

#### **COMPLAINT FOR DAMAGES**

1 136. The conduct of Defendants as set forth above was intentional and malicious and  
2 done for the purpose of causing Plaintiffs to suffer humiliation, mental anguish, embarrassment,  
3 emotional and physical distress.

4 137. As a proximate result of the conduct of Defendants as alleged above, Plaintiffs  
5 suffered humiliation, mental anguish, embarrassment, emotional and physical distress.  
6 Plaintiffs are informed and believes and thereon alleges that these injuries will result in some  
7 permanent disability to them. As a result of these injuries, Plaintiffs have suffered damages in a  
8 sum according to proof at trial.

9 138. Severe emotional anguish caused by the loss of the money was increased by the  
10 drastic lifestyle changes made by the DONECKERS, including selling their custom home in  
11 Davis in favor of moving into a lower-cost rental home, removing the children from private  
12 schools, loss of the family automobile, canceling and not scheduling family vacations, not  
13 buying Christmas trees and exchanging only minimal gifts on holidays and birthdays, not  
14 hosting milestone birthday celebrations, not eating out in restaurants, and similar cost-cutting  
15 measures.

16 139. Severe emotional anguish caused by the loss of the money was also increased by  
17 the very real fear the DONECKERS now have, on a daily basis, that WESCOTT and SINGAL  
18 have stolen the financial security of the DONECKERS' children, and the retirement and  
19 financial security of the DONECKERS. They have "lost all joy and hope in the future" and feel  
20 their mental health has declined to the point of constant sorrow, depression, anxiety and worry.

21 140. Plaintiffs DONECKERS have not yet determined the full amount of damage  
22 sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this  
23 Complaint to set forth the full amount when the same has been ascertained.

24 141. The aforementioned conduct of Defendants WESCOTT and SINGAL was willful,  
25 wanton and malicious and was intended to oppress and/or cause injury to Plaintiffs. Plaintiffs  
26 are therefore entitled to an award of punitive damages in an amount according to proof at trial.

27 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
28 them, as set forth below.

**COMPLAINT FOR DAMAGES**

1 **NINETEENTH CAUSE OF ACTION**

2 **Accounting for Gains**

3 **(Against All Defendants)**

4 142. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
5 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
6 Paragraphs 1-141, above.

7 143. Because one or more of Defendants' agents, members or principals received  
8 benefits based on their wrongful actions and to the detriment of Plaintiffs DONECKER,  
9 Defendants are subject to the disgorgement of ill-gotten gains.

10 144. Plaintiffs DONECKERS ask the court to issue a decree for accounting of gains,  
11 requiring Defendants to account for all profits, monies and benefits diverted or received by them  
12 as a result of their wrongful conduct and deliver the same to Plaintiffs DONECKER.

13 145. Defendants represented to Plaintiffs DONECKERS that each and every one of the  
14 five (5) "projects" in which they were induced to invest were genuine business opportunities with  
15 a high likelihood of success and profit. Plaintiffs DONECKERS justifiably relied on said  
16 representations, to their detriment.

17 146. Said representations were false, and were known to be false when made by  
18 Defendants, and each of them, and said representations were made to further the ends and  
19 goals of Defendants, and each of them, who had no intention of honoring said representations.

20 147. Plaintiffs DONECKERS have not yet determined the full amount of damage  
21 sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this  
22 Complaint to set forth the full amount when the same has been ascertained.

23 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
24 them, as set forth below.

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**COMPLAINT FOR DAMAGES**

1 **TWENTIETH CAUSE OF ACTION**

2 **Inducement and Declaratory Relief**

3 **(Against All Defendants)**

4 148. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
5 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
6 Paragraphs 1-147, above.

7 149. Defendants' misrepresentations were intended and did induce Plaintiffs  
8 DONECKERS to finance the various projects detailed in this complaint, which served as the  
9 basis of the investments of financial resources.

10 150. Plaintiffs DONECKERS pray for declaratory relief that Plaintiffs are entitled to a  
11 rescission of all contracts and a return of all funds expended and other damages incurred by  
12 Plaintiffs as a result of entering into all projects and investments with Defendants.

13 151. Plaintiffs DONECKERS have not yet determined the full amount of damage  
14 sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this  
15 Complaint to set forth the full amount when the same has been ascertained.

16 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
17 them, as set forth below.

18 **TWENTY-FIRST CAUSE OF ACTION**

19 **Fraud**

20 **(Against All Defendants)**

21 152. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
22 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
23 Paragraphs 1-151, above.

24 153. Plaintiffs DONECKERS are informed and believe and thereon allege that Defendant  
25 WESTCOTT and Defendant SINGAL knowingly and maliciously made false representations to  
26 Plaintiffs DONECKERS regarding the expected profitability of the projects in which they  
27 invested, understated anticipated expenses, and made promises of personal guarantees and/or  
28 payments that they had no intention of honoring. Defendants did so with the intent or

**COMPLAINT FOR DAMAGES**



1 substantial certainty of inducing Plaintiffs DONECKERS to invest many thousands of dollars in  
2 business ventures.

3 154. Based on the representation of Defendants WESTCOTT and SINGAL, Plaintiffs  
4 DONECKERS reasonably and justifiably relied on their representations and were induced to  
5 invest as set forth above.

6 155. Plaintiffs are informed and believe and thereon allege that in respect to all of the  
7 projects in which Plaintiffs were induced to invest, Defendants knew that expenses incurred in  
8 connection with them were not legitimate expenses of the projects, but nonetheless solicited  
9 investments without intent to repay the DONECKERS.

10 156. Plaintiffs DONECKERS are further informed and believe and thereon allege that  
11 without the knowledge or consent of Plaintiffs DONECKERS, Defendants WESTCOTT and  
12 SINGAL converted funds intended to be invested in the various projects to their own use and  
13 benefit to the detriment of the Plaintiffs.

14 157. Defendants' actions were willful, knowing, malicious, fraudulent, oppressive,  
15 intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in reckless and  
16 conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and shocking to the  
17 sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and  
18 punitive damages in an amount sufficient to punish and deter such conduct in the future.

19 158. Defendants represented to Plaintiffs DONECKERS that each and every investment  
20 project was viable, and would be profitable. Plaintiffs DONECKERS justifiably relied on said  
21 representations to their detriment. Said representations were false, and were known to be false  
22 when made by Defendants, and each of them, and said representations were made to further  
23 the ends and goals of Defendants, and each of them, who had no intention of honoring said  
24 representations.

25 159. Plaintiffs DONECKERS have not yet determined the full amount of damage  
26 sustained as a result of the acts by Defendant WESTCOTT described herein, and will amend  
27 this Complaint to set forth the full amount when the same has been ascertained.

28 ///

**COMPLAINT FOR DAMAGES**

1 160. Defendants' actions were willful, knowing, malicious, fraudulent, oppressive,  
2 intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in reckless and  
3 conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and shocking to the  
4 sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and  
5 punitive damages in an amount sufficient to punish and deter such conduct in the future.

6 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
7 them, as set forth below, plus general, exemplary, and punitive damages.

8 **TWENTY-SECOND CAUSE OF ACTION**

9 **Aiding and Abetting Fraud**

10 **(Against Defendant Singal and Does)**

11 161. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
12 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
13 Paragraphs 1-160, above.

14 162. As alleged herein, Defendant SINGAL, through his fraudulent solicitation  
15 representations and fraudulent promised returns on investments, intentionally defrauded  
16 Plaintiffs.

17 163. Defendant SINGAL substantially assisted and aided and abetted Defendant  
18 WESTCOTT, and Doe Defendants, in the fraud against Plaintiffs by virtue of all defendants'  
19 specific intent to facilitate fraudulent conduct, i.e., the investment scheme, and, the scheme to  
20 hide or conceal the fact the deed of trust securing the original investment was not and would  
21 never be recorded.

22 164. The investment scheme constituted a material part of said fraud because it enabled  
23 the Defendants to siphon off management fees and convert the funds that were never  
24 supposed to be appropriated. Defendant SINGAL at all times material knew that Defendant  
25 Westcott was engaging in fraud and willingly provided assistance to him in doing so.

26 165. As a proximate result of Defendant SINGAL's conduct, Plaintiffs suffered economic  
27 damages in an amount according to proof at trial.

28 ///

**COMPLAINT FOR DAMAGES**

1 166. As a further proximate result of Defendants' conduct, Plaintiffs suffered and  
2 continue to suffer humiliation, loss of sleep, mental anguish and emotional and physical  
3 distress. Plaintiffs DONECKERS further suffered and continue to suffer extreme anxiety over  
4 the existing, continuing, and potential losses of millions of dollars

5 167. Defendant SINGAL's actions were willful, knowing, malicious, fraudulent, oppressive,  
6 intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in reckless and  
7 conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and shocking to the  
8 sensibilities of reasonable persons, and Plaintiffs are entitled to an award of exemplary and  
9 punitive damages in an amount sufficient to punish and deter such conduct in the future.

10 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants as set forth  
11 below.

12 **TWENTY-THIRD CAUSE OF ACTION**

13 **Aiding and Abetting Fraud**

14 **(Against Defendant Carl A. Wescott and Does)**

15 168. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
16 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
17 Paragraphs 1-167, above.

18 169. As alleged herein, Defendant WESTCOTT, through his fraudulent solicitation  
19 representations and fraudulent promised returns on investments, intentionally defrauded  
20 Plaintiffs.

21 170. Defendant WESTCOTT substantially assisted and aided and abetted Defendant  
22 SINGAL, and Doe Defendants, in the fraud against Plaintiffs by virtue of all defendants' specific  
23 intent to facilitate fraudulent conduct, i.e., the investment scheme, and, the scheme to hide or  
24 conceal the fact the deed of trust securing the original investment was not and would never be  
25 recorded.

26 171. The investment scheme constituted a material part of said fraud because it enabled  
27 the Defendants to siphon off management fees and substantial portions of investment principal  
28 and convert the funds that were to be devoted to development projects and not other

1 unauthorized, inappropriate, personal uses. Defendant WESCOTT at all times material knew  
2 that Defendant SINGAL was engaging in fraud and willingly provided assistance to him in doing  
3 so.

4 172. As a proximate result of Defendant WESCOTT's conduct, Plaintiffs suffered  
5 economic damages in an amount according to proof at trial.

6 173. As a further proximate result of Defendants' conduct, Plaintiffs DONECKERS  
7 suffered and continue to suffer humiliation, loss of sleep, mental anguish and emotional and  
8 physical distress. Plaintiffs DONECKERS further suffered and continue to suffer extreme  
9 anxiety over the existing, continuing, and potential losses of hundreds of thousands of dollars.

10 174. Defendant WESCOTT's actions were willful, knowing, malicious, fraudulent,  
11 oppressive, intended to injure Plaintiffs, subject them to a cruel and unjust hardship, and/or in  
12 reckless and conscious disregard of Plaintiffs' rights. Such conduct is reprehensible and  
13 shocking to the sensibilities of reasonable persons, and Plaintiffs are entitled to an award of  
14 exemplary and punitive damages in an amount sufficient to punish and deter such conduct in  
15 the future.

16 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants as set forth  
17 below.

#### 18 TWENTY-FOURTH CAUSE OF ACTION

##### 19 **Injunction Freezing Assets**

##### 20 **(Against Defendant Carl A. Wescott and Does)**

21 175. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
22 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
23 Paragraphs 1-174 above.

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#### COMPLAINT FOR DAMAGES

1 176. Plaintiffs DONECKERS are informed and believe and thereon allege that at all times  
2 herein mentioned, Defendant WESCOTT is or was the owner of an interest, all or part, of  
3 certain real properties in the state of California:

4 Mendocino County: 30901 Sherwood Road, Willits  
5 Mendocino County: 5700 Robinson Creek Road, Ukiah  
6 Mendocino County: 9501 Lane Drive, Ukiah  
7 San Francisco County: 853 Ashbury Street, San Francisco  
8 San Francisco County: 1083 Mississippi Street, San Francisco  
9 Sonoma County: 5760 Chemise Road, Healdsburg

10 In addition, Plaintiffs are informed and believe and thereon allege that at all times herein  
11 mentioned, Defendant WESCOTT is a record owner of all or part of certain residential or  
12 commercial or undeveloped real property located outside of the United States.

13 177. Plaintiffs DONECKERS are further informed and believe that Defendant WESCOTT  
14 is in possession and/or control of other tangible property which they will amend this Complaint  
15 to include when ascertained.

16 178. Injunctive relief is appropriate in this case, because there is imminent and ongoing  
17 risk that Defendant WESCOTT may attempt to transfer, dispose of, or conceal the referenced  
18 assets, to avoid their recovery by creditors or to otherwise prevent attachment by judgment  
19 creditors, and to avoid a multiplicity of actions. It would be extremely difficult to fix the amount  
20 of compensation that would afford adequate relief, and unless an injunction is granted, Plaintiffs  
21 DONECKERS may otherwise be deprived of a remedy.

22 179. Plaintiffs DONECKERS request the immediate issuance of a temporary injunction  
23 preventing the transfer, disposal or concealment by Defendant WESCOTT of all or part of  
24 Defendant WESCOTT's real property described above, and any other over which he exercises  
25 dominion and control.

26 180. Plaintiffs DONECKERS are willing and able to file a undertaking to protect the  
27 interests of innocent parties.

28 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants as set forth  
below.

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**COMPLAINT FOR DAMAGES**

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**TWENTY-FIFTH CAUSE OF ACTION**

**Imposition of Constructive Trust  
(Against All Defendants)**

181. Plaintiffs incorporate by reference as though fully set forth herein, the allegations contained in Sections I and II above, all paragraphs and subparagraphs therein, and Paragraphs 1-180, above.

182. By engaging in the conduct alleged herein, Defendants, and each of them, have been unjustly enriched at the expense, and to the detriment of Plaintiffs DONECKER.

183. Defendants, and each of them, should be required to disgorge the benefits which they have obtained at the expense, and to the detriment of Plaintiffs DONECKER, and a constructive trust should be imposed upon all properties as described in Paragraph 88 above, as well as such other tangible property in the possession and/or control of Defendants, so that such benefits properly may be realized by Plaintiffs DONECKER.

184. Plaintiffs DONECKERS have not yet determined the full amount of damage sustained as a result of the acts by Defendant WESCOTT described herein, and will amend this Complaint to set forth the full amount when the same has been ascertained.

WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of them, as set forth below.

**TWENTY-SIXTH CAUSE OF ACTION**

**Unfair Business Practices  
(Against All Defendants)**

185. Plaintiffs incorporate by reference as though fully set forth herein, the allegations contained in Sections I and II above, all paragraphs and subparagraphs therein, and Paragraphs 1-184 above.

186. In the course of the conduct by Defendants, their authorized agents on behalf them as herein above alleged have violated a number of laws, including breaches of "common law" duties, and statutes prohibiting such conduct. Accordingly, said Defendants have engaged in

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1 unfair and fraudulent business acts and practices as set forth in Business and Professions  
2 Code Section 17200.

3 187. Therefore, this Court should issue an injunction prohibiting Defendants and each of  
4 them from engaging in such unfair and fraudulent business acts and practices, as set forth in  
5 Plaintiffs' prayer for relief herein.

6 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
7 them, as set forth below.

8 **TWENTY-SEVENTH CAUSE OF ACTION**

9 **Violation of Cal. Bus. & Prof. Code Sect. 17200 et. seq.**

10 **(Against All Defendants)**

11 188. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
12 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
13 Paragraphs 1-187, above.

14 189. Defendants' conduct as previously alleged constitutes unlawful business acts or  
15 practices within the meaning of California Business & Professions Cod Sect. 17200, including  
16 the following:

- 17 a) Defendants' conduct in facilitating and enabling the "investment" scheme to  
18 abscond with Plaintiffs' money;
- 19 b) The "investments" made by Plaintiffs by and through Defendants constitute  
20 "securities" within the meaning of California Corporations Code Sect. 25401.  
21 By virtue of the conduct of Defendants with the sale of these investments, as  
22 alleged herein above, and soliciting the sale of "securities" through the  
23 making of false representations in violation of said code section. Defendants'  
24 conduct in facilitating and enabling the scheme as alleged above constitutes  
25 a violation of California Corporations Code Sect. 25403 (b), which provides:

26 Any person that knowingly provides substantial assistance to  
27 another person in violation of any provision of this division or  
28 any rule or order there under shall be deemed to be in  
violation of that provision, rule, or order to the same extent as  
the person to whom the assistance was provided.

**COMPLAINT FOR DAMAGES**



1 190. Defendants' conduct as previously alleged, constitutes unfair business acts or  
2 practices within the meaning of California Business & Professions Code Sect. 17200.  
3 Defendants' unlawful, unfair and/or fraudulent acts in enabling and facilitating the investment  
4 scheme as described herein above constitutes unfair competition within the meaning of  
5 California Business & Professions Code Sect. 17200. Plaintiffs lost money, i.e., the loss of their  
6 investments, as a result of said unfair competition. Accordingly, Plaintiffs may obtain against  
7 Defendants, and all of them, all remedies and penalties authorized by California Business &  
8 Professions Code Sect. 17203, including without limitation restitution, disgorgement, and other  
9 relief for each illegal, unfair and fraudulent business act or practice, and attorneys' fees  
10 pursuant to California Code of Civil Procedure Sect. 1021.5 and the Court's equitable powers,  
11 in an amount subject to proof at trial.

12 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
13 them, as set forth below.

14 **TWENTY-EIGHTH CAUSE OF ACTION**

15 **Aiding and Abetting Violation of Cal. Bus. & Prof. Code Sect. 17200 et. seq.**

16 **(Against All Defendants)**

17 191. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
18 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
19 Paragraphs 1-190 above.

20 192. The conduct of Defendants constitute unlawful business acts or practices within the  
21 meaning of California Business & Professions Code Section 17200, including without limitation:

- 22 a) misappropriating all sums invested by Plaintiffs that were to be invested in  
23 specific projects and not to divert them to unrelated personal or business  
24 purposes;
- 25 b) charging management fees which was never agreed to by Plaintiffs;
- 26 c) misappropriating the funds invested by Plaintiffs into scam investments which  
27 had no or little likelihood of ever paying off; and

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**COMPLAINT FOR DAMAGES**

1 d) charging management fees which were never agreed to by Plaintiffs. The  
2 foregoing conduct violates California's Uniform Fraudulent Transfer Act, Civil  
3 Code Sects. 3439.01-3439.12.

4 193. The investments made by Plaintiffs during the entire scheme alleged herein  
5 constitute "securities" within the meaning of California Corporations Code Sect. 25401. By  
6 virtue of the conduct of Defendants in connection with the making of these investments, as  
7 alleged herein above, Defendants solicited the sale of securities through the making of false  
8 representations in violation of said section. Said conduct constitutes a violation of California  
9 Corporations Code Sect. 25401, which provides: "It is unlawful for any person to offer or sell a  
10 security in this state of buy or offer to buy a security in this state by means of any written or oral  
11 communication which includes an untrue statement of a material fact or omits to state a  
12 material fact necessary in order to make the statements made, in the light of the circumstances  
13 under which they were made, not misleading."

14 194. The conduct of Defendants , as previously alleged constitutes unfair business acts  
15 or practices within the meaning of California Business & Professions Code Sect. 17200.

16 195. The unlawful, unfair and/or fraudulent acts of Defendants in operating the  
17 investment scheme described above constitute unfair competition within the meaning of  
18 California Business & Professions Code Sect. 17200. Plaintiffs lost money, their investments as  
19 a result of said unfair competition. Defendants by their conduct as previously alleged,  
20 substantially aided and abetted each other Defendant in the commission of such unfair  
21 business competition. Defendants aided and abetted the unfair competition of each and all  
22 Defendants with actual knowledge of certain specific acts constituting said unfair competition,  
23 i.e., those acts of each and all Defendants which pertained to the investment scheme as  
24 alleged herein above, and with the specific intent to facilitate said acts. Accordingly, Plaintiffs  
25 may obtain against Defendants all remedies and penalties authorized by California Business &  
26 Professions Code Sect. 17203, including without limitation restitution, disgorgement, and other  
27 penalties for each illegal, unfair and fraudulent business act or practice, and attorneys' fees

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**COMPLAINT FOR DAMAGES**

1 pursuant to California Code of Civil Procedure Sect. 1021.5 and the Court's equitable powers,  
2 in an amount subject to proof at trial.

3 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
4 them, as set forth below.

5 **TWENTY-NINTH CAUSE OF ACTION**

6 **Civil Conspiracy**

7 **(Against All Defendants)**

8 196. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
9 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
10 Paragraphs 1-195, above.

11 197. Plaintiffs are informed and believe, and on that basis allege, that at all times herein  
12 mentioned, each of the Defendants was the agent and/or employee of each of the remaining  
13 Defendants, and in doing the thing hereinafter alleged, was acting within the course and scope  
14 of such agency and/or employment, and that all Defendants acted at all times with the  
15 knowledge of the actions of each of the remaining Defendants.

16 198. As more fully set forth above, Plaintiffs allege on information and belief that during  
17 the entire transaction period, Defendants, and each of them, knowingly and willfully conspired  
18 and agreed among themselves and with Defendants , or in the alternative, later joined the  
19 ongoing conspiracy and fully ratified all material past actions and the purpose of the conspiracy  
20 and agreed, inter alia, as follows:

- 21 a) to form the an enterprise for the purpose of assisting, facilitating and  
22 furthering the investment scheme as alleged above;
- 23 b) to misappropriate and convert the monies invested by Plaintiffs with  
24 Defendants during the transaction period;
- 25 c) to defraud Plaintiffs of their investment and to breach duties owed to them;
- 26 d) to derive other profits and benefits through the pattern of fraud as alleged  
27 above.

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**COMPLAINT FOR DAMAGES**

1 199. Defendants, and each of them, did the acts and things alleged above pursuant to,  
2 and in furtherance of, said conspiracy and the above-alleged agreement.

3 200. Each of the Defendants furthered the conspiracy by cooperating with, lending aid,  
4 offering to lend money and encouragement to, and/or ratifying and adopting the acts of each of  
5 the other Defendants in enabling and facilitating the investment scheme. Each of the  
6 Defendants had knowledge not only of the actions of each of the other Defendants in  
7 connection with the investment scheme, but also of the conspiracy itself and its unlawful and  
8 tortuous purpose.

9 201. As a direct and proximate cause of said conspiracy and the wrongful acts alleged  
10 herein, Plaintiff suffered economic damages in an amount according to proof at trial.

11 202. As a proximate result of Defendants' conduct Plaintiffs suffered severe emotional  
12 distress, including without limitation anxiety, nervousness, sleeplessness, humiliation, anguish,  
13 and physical distress. As a result of such harm, Plaintiffs have suffered such damages in an  
14 amount according to proof at trial.

15 203. Defendants' actions were malicious, fraudulent, oppressive, intended to injure  
16 Plaintiffs and/or in reckless disregard of Plaintiffs' rights. Consequently, Plaintiffs are entitled to  
17 punitive damages.

18 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
19 them, as set forth below.

20 **THIRTIETH CAUSE OF ACTION**

21 **Violation of Corporations Code Section 25401**

22 **(Against All Defendants)**

23 204. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
24 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
25 Paragraphs 1-203, above.

26 205. The investments made by Plaintiffs during the entire scheme alleged herein  
27 constitute "securities" within the meaning of California Corporations Code Sect. 25401. By  
28 virtue of the conduct of Defendants in connection with the making of these investments, as

**COMPLAINT FOR DAMAGES**

1 alleged herein above, Defendants solicited the sale of securities through the making of false  
2 representations in violation of said section. Said conduct constitutes a violation of California  
3 Corporations Code Sect. 25401, which provides: "It is unlawful for any person to offer or sell a  
4 security in this state of buy or offer to buy a security in this state by means of any written or oral  
5 communication which includes an untrue statement of a material fact or omits to state a  
6 material fact necessary in order to make the statements made, in the light of the circumstances  
7 under which they were made, not misleading."

8 206. Defendants offered to sell and to buy a "security" under California Corporations  
9 Code Sect. 25019.

10 207. Said offer by Defendants to sell and to buy a "security" was made by means of  
11 written and oral communications with Plaintiffs.

12 208. Plaintiffs made actual investments, purchases with and loans to Defendants. Said  
13 investments, purchases and loans by Plaintiffs were completed within the State of California.

14 209. As a proximate result of Defendants' conduct, Plaintiffs suffered economic damages  
15 in an amount according to proof at trial.

16 210. As a proximate result of Defendants' conduct Plaintiffs suffered severe emotional  
17 distress, including without limitation anxiety, nervousness, sleeplessness, humiliation, anguish,  
18 and physical distress. As a result of such harm, Plaintiffs have suffered such damages in an  
19 amount according to proof at trial.

20 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and each of  
21 them, as set forth below.

### 22 **THIRTY-FIRST CAUSE OF ACTION**

#### 23 **Civil RICO and RICO Conspiracy Pursuant to 18 U.S.C. § 1962(c), (d)**

#### 24 **(Against All Defendants)**

25 211. Plaintiffs incorporate by reference as though fully set forth herein, the allegations  
26 contained in Sections I and II above, all paragraphs and subparagraphs therein, and  
27 Paragraphs 1-210, above.

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#### **COMPLAINT FOR DAMAGES**

1        212. At all times relevant herein, Defendants were “persons” within the meaning of 18  
2 U.S.C. § 1961(3) who conducted the affairs of the enterprise through a pattern of  
3 racketeering activity in violation of 18 U.S.C. § 1962(c). In violation of § 1962(c) and (d),  
4 Defendants conducted or participated and/or conspired to conduct or participate, directly or  
5 indirectly, in the conduct of certain enterprises affairs through a pattern of racketeering  
6 activity, thereby proximately causing injury to Plaintiffs' businesses or property. Each of  
7 these Defendants knew the essential nature and scope of the enterprise that he was  
8 employed by or associated with, and each of the Defendants intended to participate in the  
9 affairs of the particular enterprise.

10        213. The Wescott / Singal Investment Scheme is and has been a RICO enterprise  
11 as that term is defined in § 1961(4) of RICO. At all times relevant hereto, the activities of the  
12 Wescott / Singal Investment Scheme enterprise affected interstate or foreign commerce.  
13 Defendants were employed by and/or associated with that scheme / enterprise, including by  
14 and through their association with Strategic / Surprise. In violation of § 1962(c) of RICO,  
15 Defendants conducted and/or conspired to conduct the affairs of the Wescott / Singal  
16 Investment Scheme through a “pattern of racketeering activity,” as that term is defined in §  
17 1961(1) and (5) of RICO. Defendants committed, aided and abetted and/or conspired to  
18 commit or threaten to commit violations 18 U.S.C. § 1512 (obstruction of justice), as alleged  
19 below.

20        214. In the alternative, there existed an associated-in-fact enterprise consisting of  
21 Strategic, Surprise, Wescott, and Singal. Each defendant named in this count is a member  
22 of the associated-in-fact-enterprise, voluntarily agreed to join the enterprise and played an  
23 active role in its affairs. Each of the members of the associated-in-fact enterprise are  
24 persons or legally incorporated entities that conducted (and conduct) business activities  
25 through the United States and overseas. The activities of the associated-in-fact enterprise  
26 affected interstate and/or foreign commerce. The members of the enterprise, including each  
27 defendant named in this count, continue their professional and business activities to date.  
28 Each of them was motivated by the desire to obtain money from unsuspecting and

1 misinformed California investors, including Plaintiffs, in violation of their constitutional rights.  
2 Each member of the associated-in-fact enterprise conducted and/or conspired to conduct  
3 the affairs of the associated-in-fact enterprise through a "pattern of racketeering activity," as  
4 that term is defined in § 1961(1) and (5) of RICO.

5 215. In addition, the pattern of racketeering committed and/or aided and abetted  
6 by Defendants involves multiple separate instances of violations of 18 U.S.C. § 1512(b), (c)  
7 in furtherance of the unlawful scheme in order to secure investments from unsuspecting  
8 and misinformed California investors, including Plaintiffs.

9 216. The instances of Defendants' violations of 18 U.S.C. § 1512(b), (c) in  
10 furtherance of the enterprises' unlawful scheme include:

- 11 a. Material misrepresentation concerning Defendants' willingness, intention and  
12 ability to repay loans obtained from Plaintiffs Doneckers;
- 13 b. Material misrepresentation concerning the status of each and every one of  
14 the five (5) "investment projects."
- 15 c. Material misrepresentation concerning Defendants' willingness and ability to  
16 fund "investment projects" to successful completion.
- 17 d. Material misrepresentation concerning the value and quality of the real  
18 property offered as security for the \$250,000.00 promissory note;

19 217. Defendants' acts, misrepresentations, and failure to fully and fairly disclose  
20 the true facts concerning the five (5) "investment projects", the quality of the security for the  
21 \$250,000.00 note, failure to record the promised Deed of Trust as security for the  
22 \$250,000.00 note, in violation of 18 U.S.C. § 1512, constitute a "pattern of racketeering  
23 activity," as that term is defined in § 1961(1) and (5) of RICO, because the acts were related  
24 to each other and had continuity. As alleged herein, Defendants' violations of these federal  
25 statutes had the same or similar purposes, results, participants, victims, or methods of  
26 commission; they were interrelated and not isolated events. Defendants' violations of these  
27 federal statutes evidenced continuity because they amounted to a period of repeated

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**COMPLAINT FOR DAMAGES**



1 conduct or conduct that extended temporally from the past into the future with a threat of  
2 repetition.

3 218. Plaintiffs have standing to sue under RICO because they have been injured  
4 in their business or property by reason of Defendants' violations of § 1962(c) and (d), as set  
5 forth in paragraphs 84 through 86, and 95 herein. Pursuant to § 1964(c) of RICO, Plaintiffs'  
6 are entitled to recover threefold the damages sustained, as well as punitive damages and  
7 the costs of bringing suit, including reasonable attorney's fees.

8 WHEREFORE, Plaintiffs DONECKERS pray for judgment against Defendants, and  
9 each of them, as set forth below.

### 10 PRAYER

11 **WHEREFORE: Plaintiffs DONECKERS claim damages in an amount to be**  
12 **determined, plus costs, and for any further relief that this Court deems necessary and**  
13 **appropriate, as follows:**

- 14 1. For principal of \$250,000.00 on the Promissory Note dated July 1, 2008, and  
15 accrued interest at 15% until paid;
- 16 2. For principal of \$500,000.00 on the loan made September 29, 2008, and  
17 accrued interest at 15% until paid;
- 18 3. For principal of \$362,916.67 on the loan made on December 31, 2008, and  
19 accrued interest at 15% until paid;
- 20 4. For restitution of \$600,000.00 investment principal and statutory interest thereon;
- 21 5. For any and all profits lost, expenses incurred and damages as a result of the  
22 actions alleged above;
- 23 6. For compensatory damages according to proof;
- 24 7. For disgorgement according to proof;
- 25 8. For punitive and exemplary damages in an amount sufficient to deter  
26 Defendants and others from such conduct;
- 27 9. For damages resulting from mental and emotional distress;
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#### COMPLAINT FOR DAMAGES

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10. For an order preventing the transfer, disposal, or concealment during the pendency of this action, all or a portion of Defendants' interest in the real properties commonly known as:
- Mendocino County: 30901 Sherwood Road, Willits  
Mendocino County: 5700 Robinson Creek Road, Ukiah  
Mendocino County: 9501 Lane Drive, Ukiah  
San Francisco County: 853 Ashbury Street, San Francisco  
San Francisco County: 1083 Mississippi Street, San Francisco  
Sonoma County: 5760 Chemise Road, Healdsburg
11. For an order preventing the transfer, disposal, or concealment during the pendency of this action, of all or a portion of Defendants' interest in any other later ascertained real properties located in or outside of the United States.
12. For an order preventing the transfer, disposal, or concealment during the pendency of this action, of all or a portion of Defendants' interest in any and all additional tangible assets under the possession and/or control of Defendants, as and when ascertained;
13. For an order preventing the transfer, disposal, or concealment during the pendency of this action, of all or a portion of Defendants' interest in any other later ascertained tangible assets located in or outside of the United States.
14. Preventing the transfer, disposal or concealment of any and all assets of Defendants Wescott and Singal, and freezing all assets in any accounts held in the name of either Defendant WESCOTT or SINGAL at any bank or financial institution as and when ascertained.
15. Attorney's Fees and Costs associated with enforcement of the terms of the July 2008 Promissory Note in the amount of \$250,000.00.
16. Attorneys' fees and costs pursuant to 42 U.S.C. § 1988, 18 U.S.C. § 1964, California Civil Code §§ 52 and 52.1, and as otherwise authorized by statute or law;
17. For costs of suit and such other and further legal and equitable relief as the court deems proper.

Dated: \_\_\_\_\_ Law Offices of  
de la VERGNE & McMURTRY  
A Professional Corporation  
  
Attorneys for Plaintiffs DONECKER  
  
By: \_\_\_\_\_  
James V. de la Vergne

**DONECKER vs WESCOTT and SINGAL, et al**

**EXHIBIT LIST**

<b>Description</b>	<b>Exhibit Number</b>
Carl Wescott Balance Sheet (May 14, 2008) . . . . .	1
Promissory Note (July 1, 2008) . . . . .	2
Schwab Money Transfer Confirmation of \$250,000. . . . .	3
Email Exchange re Healdsburg Property. . . . .	4
Email exchange for the period July 15, 2008 through August 7, 2008 . . . . .	5
Deed of Trust Attachment. . . . .	5.1
Term Sheet: Lincoln Oaks Estates. . . . .	6
Schwab Money Transfer Confirmation for Lincoln Oaks Estates. . . . .	6.1
Term Sheet: Livingston Retail . . . . .	7
Schwab Money Transfer Confirmation for Livingston Retail. . . . .	7.1
Term Sheet: September 29, 2008. . . . .	8
Schwab Money Transfer Confirmation for September 29, 2008 Term Sheet. . . . .	8.1
Term Sheet Agreement: December 31, 2008. . . . .	9
Note and Caption: Lonsdale vs. Wescott, San Francisco County. . . . .	10
Note and Caption: Kirk vs. Wescott, San Francisco County. . . . .	11
Note and Caption: Fiechter vs. Wescott, San Francisco County. . . . .	12
Caption: Dequine & Associates vs Wescott. . . . .	13